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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 477

BARKER PAINTING COMPANY, PETITIONER,

vs.

LOCAL No. 734, BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 6, 1929

CERTIORARI GRANTED DECEMBER 9, 1929

(34,608)

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IN THE

District Court of the United States

FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY. No. 1160.

BARKER PAINTING COMPANY,

v.

LOCAL No. 734, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GEORGE W. HOFFMAN AND HARRY S. WARREN.

DOCKET ENTRIES.

Mar. 16, 1925.	Bill of Complaint filed.
" " "	Order to Show Cause why Injunction should not issue and restraint filed.
" " "	Bond filed.
" 19, "	Subpœna issued.
" 23, "	Affidavits of Service filed (2).
" 25, "	Order continuing hearing filed.
" 27, "	Subpœna returned, served Mar. 26, and filed.
" 30, "	Order of Continuance of Order to Show Cause, filed.
Apr. 15, "	Answer filed.
" 18, "	Replication filed.

May	8, 1925.	Final hearing. Adjourned to May 22.
"	22, "	Final hearing. Decision reserved.
June	29, "	Final hearing. Final Argument. Decision reserved.
Apr.	14, 1926.	Opinion filed.
"	19, "	Order denying motion for Injunction and discharging Order to Show Cause, &c. filed.
Mar.	7, 1928.	Order extending Term filed.
"	23, "	Final Decree dismissing Bill with Costs filed.
June	4, "	Order extending Term filed.
"	" "	Petition for Appeal and Notice of Appeal filed.
"	" "	Order allowing Appeal filed.
"	" "	Citation issued.
"	" "	Citation returned, service acknowledged. Copy filed.
"	8, "	Stipulation as to Bond filed.
"	" "	Bond on Appeal filed.
Sept.	1, "	Order Extending Time of Term filed.
		C L O S E D
Nov.	6, 1928.	Order Extending Time of Term filed.
Feb.	21, 1929.	Order Extending Time of Term filed.

TRANSCRIPT OF THE RECORD AND BILL OF EXCEPTIONS.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY. No. 1160.

BARKER PAINTING COMPANY,
Plaintiff-Appellant,

v.

LOCAL NO. 734, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; GEORGE W. HOFFMAN AND HARRY S. WARREN,
Defendants-Appellees.

UNITED STATES OF AMERICA,
DISTRICT OF NEW JERSEY, } *ss.:*

BE IT REMEMBERED, that in the United States District Court for the District of New Jersey, at the time hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause to wit:

BILL OF COMPLAINT.

(Filed March 16, 1925.)

To the Honorables, the Judges of the United States District Court for the District of New Jersey:

1. Plaintiff, Barker Painting Company, is a corporation organized and existing under the laws of the State of New York. It is a resident, citizen and inhabitant of the State of New York, and is not a resident, citizen and inhabitant of the State of New Jersey.

2. Defendant, Brotherhood of Painters, Decorators and Paper Hangers of America, is a voluntary organization of the State of Indiana and is a resident, citizen and inhabitant of the State of Indiana and is not a resident, citizen and inhabitant of the State of New York. Defendant, Local No. 734, Brotherhood of Painters, Decorators and Paper Hangers of America, is a local of the Brotherhood of Painters, Decorators and Paper Hangers of America and is a resident, citizen and inhabitant of the State of New Jersey and is not a resident, citizen or inhabitant of the State of New York. Defendants, George W. Hoffman and Harry S. Warren, are each of them residents, citizens and inhabitants of the State of New Jersey and are not residents, citizens or inhabitants of the State of New York.

3. Plaintiff, Barker Painting Company, is and has been for the past fourteen years engaged in the business of interior and exterior painting and decorating and its business extends and has for some years extended throughout the United States and Canada. It has at the present time painting and decorating in the States of New Jersey, New York, Pennsylvania, Connecticut and District of Columbia. It now has and has for some years past maintained in the City of New York a warehouse where it stores material, including paints, oils, colors, varnishes, tools, etc., and as it gets work to do in different states it ships said materials, oils, varnishes, tools, etc., to the various places in the various states from its warehouse in New York; it likewise purchases for use upon the various jobs in different states other than New York, materials, including paints, oils, varnishes, etc., in New York and causes these materials to be shipped to the respective works in different states. It has an investment in its

business of approximately $160,000, and does a business of approximately $800,000 to a $1,000,000 a year.

4. There is and has been for some years last past an unincorporated voluntary organization in Indiana, known as the Brotherhood of Painters, Decorators and Paper Hangers of America, said Brotherhood of Painters, Decorators and Paper Hangers of America is made up of various districts and locals located throughout the United States, which districts or locals located throughout the United States, which districts or locals have representation in the international association which has its headquarters at Lafayette, Indiana. At the present time and for some years past the design and purpose of the Brotherhood of Painters, Decorators and Paper Hangers of America has been to compel employers of labor engaged in building operations such as that upon which complainant is engaged to employ none but members of said Brotherhood of Painters, Decorators and Paper Hangers of America. There are also at the present time and have been for some years last past other voluntary organizations known as the United Brotherhood of Carpenters and Joiners of America, with its headquarters in the City of Indianapolis, State of Indiana, which assumes jurisdiction over those engaged in carpenter work upon structural operations; the National Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, which assumes jurisdiction over all those engaged in transportation by means of horses or motor cars. There are other voluntary organizations of similar kind which have jurisdiction over those engaged in different lines of work upon building construction. As a matter of fact there is an International Labor Organization for every class of work engaged upon building construction throughout the United States. All of these organizations, including the

Brotherhood of Painters, Decorators and Paper Hangers of America are affiliated with the American Federation of Labor, one of the purposes of which is to compel the employment by all employers of labor throughout the United States and Canada of persons who are members of some one of these subordinate unions, and the result of the success will be to prevent the employment of any person who is not a member of one of the subordinate labor organizations in any line of endeavor throughout the United States and Canada.

5. The labor organizations as aforesaid operate through locals and district councils. The Brotherhood of Painters, Decorators and Paper Hangers of America are represented in district of New Jersey in the territory including Somerville, N. J., by local No. 734, of the Brotherhood of Painters, Decorators and Paper Hangers of America, and that local claims to have jurisdiction of all persons engaged in the business of working upon painting or interior decorating within the territory of Somerville. The said unions having to do with building operations are also represented by members upon a council known as a Building Trades Council, which said council is made up of representatives from the various labor organizations having to do with building operations, and complainant says that it is the purpose of all those labor organizations, National and subordinate, to compel the employment of none but union labor in the United States, to exclude non-union labor from employment absolutely and to compel all employers of labor to govern their course of conduct by rules and regulations promulgated by said unions and to take away from the employer the right to conduct his business. The building trades in New Jersey, including Somerville and extending over the entire Metropolitan District, which includes the City of New York, and the Northern part of New Jer-

sey, including Somerville, are thoroughly unionized, and there is and has been for some years past an agreement between the various unions engaged in the building operations therein, that in case any employer of labor upon any particular job is in difficulty with the union and employs non-union men or otherwise operates in violation of the terms and conditions prescribed by the union, not only members of the particular union concerned refuse to work for the said employer or upon said job, but all other union men employed upon the said job or any other job upon which the said employer in conflict with the union may be employed, will refuse to proceed with the work, with the result that all work upon which the employer may be engaged will cease. This method of coercion and intimidation has been the method pursued by the said unions for some years past, is well understood and has a coercive and intimidative effect upon all persons desiring construction work to be performed and upon all classes of labor.

6. There is a rule of the Brotherhood of Painters, Decorators and Paper Hangers of America that no workman shall come from a foreign district without obtaining from the union of the local having jurisdiction in the foreign district a clearance card and filing that clearance card with the local having jurisdiction in which the work is to be done within forty-eight hours after the commencing of work and being accepted by the said local. There are other rules of said Brotherhood of Painters, Decorators and Paper Hangers of America as well as all the other labor organizations heretofore referred to which provide that in case of violation by any one of their members of any order of the said labor organization represented by their business managers or other representatives, fines may be imposed upon said members, and in case of continued

violation they may be expelled from the union, and because of the condition of the industry in the district aforesaid, the workman will be deprived of any opportunity to make a livelihood at his trade. The result of these rules and regulations is that if in violation of the orders of any one of the business agents of a union a workman shall work for a contract, he will be fined; and if he continues to work will be expelled from the union and thereby be deprived of his opportunity to make a livelihood at his trade, and the other union employees of said contractor will be called out, and if the contractor proceeds with the work with non-union employees or with union employees working in violation of the orders of the business agent, a sympathetic strike will be ordered by the union having jurisdiction of any other workmen working on said job for said contractors and the said workmen so working for other contractors, although they may be perfectly satisfied with their wages, hours, and working conditions, and although there may be no difficulty with the other contractors, will be obliged to cease from working because of the fear of fines and expulsions and the entire job will be stopped, and if this is not effective then the same kind of sympathetic strikes will be called upon other work upon which the contractor involved may be engaged.

7. There are different union conditions with respect to wages, hours and working conditions prevailing in different parts of the district aforesaid. The scale for the City of New York is ten dollars and fifty cents a day for eight hours work, five days a week. The scale for the City of Newark is ten dollars a day for eight hours work, five and a half days a week. The scale for Detroit is eight dollars a day for eight hours work and five and a half days a week. The scale for Washington is nine dollars a day for eight hours work,

five and a half days a week. The scale for Somerville is eight dollars a day for eight hours work, five and a half days a week.

8. These wages, hours, and working conditions are determined by the union and are based in part upon differences in local conditions, including the cost of living, and so forth. The difference in local conditions, of course, go into the determination of the amount which persons engaged in building operations are willing to pay for building work.

7. About the month of January, 1922, at a convention of the International Painters and Paper Hangers, held at Dallas, Texas, the convention passed a rule that where a contractor took work away from his home town, he should pay the rate of wages and observe the union conditions prevailing in his home town, if that rate of wages or working conditions were more favorable to the workman than the union scale prevailing in the district in which the work was to be done, otherwise he should pay the union scale and observe the union conditions prevailing in the place in which the work was to be done.

8. Complainant says that said rule is illegal and violative of the constitutional rights of employers of labor; it creates an illegal and unjust discrimination; it has the effect of making it more expensive for the person not living in the particular district to do work therein, in many instances it would result in excluding from the fields of operation in a particular district any persons not residents therein; because of the power of the said Brotherhood of Painters, Decorators and Paper Hangers of America in conjunction with the other unions heretofore referred to, it has more force and effect than would a statute of the state.

9. On the 8th day of November, 1924, plaintiff took a contract for the labor and material necessary for the completion of the painting of the Somerset Hospital, located on Rehill Avenue, Somerville, Somerset County, New Jersey, for the contract price of $7800. The contract provided that the work should be performed as required by the progress of the job. The contract of plaintiff was made with John Lowry, Inc., the general contractor upon the work. Plaintiff forthwith proceeded with the performance of the work and in the performance thereof all of the help it employed was local to the district except the foreman. It is the practice of all concerned, engaged in the business of painting, to send foremen from the home town. It paid the union scale prescribed by the district of Somerville and complied with the union conditions with respect to hours, and the number of days that work should be done during the week prescribed by the union for the territory including Somerville and continued on said work from December 7, 1924 to February 21, 1925. All of the men employed by plaintiff were satisfied with their wages, hours and working conditions. On or about the 21st of February, 1925, George W. Hoffman, who is the business agent or delegate of Local No. 734, informed plaintiff that he had been directed by Harry S. Warren, state organizer of the Brotherhood of Painters, Decorators and Paper Hangers of America to prevent work going forward unless plaintiff would pay the wage scale and observe working conditions prescribed by the union for the City of New York, that being the home town of plaintiff and stated that if plaintiff did not accede to the request the men employed by plaintiff would be directed not to work and plaintiff would not be permitted to obtain other help and the work would be stopped. Plaintiff refused to accede to the request

whereupon the said business agent or delegate directed men to cease work and they did cease work and have not worked since, and performance of the work has been completely stopped. The men employed by plaintiff were content with their wages, hours and working conditions and ceased work only because they were directed to cease work by the union officials aforesaid and because if they had not ceased work, they knew they would be fined by the union and if they persisted in their disobedience they would be expelled from the union and would thereby be deprived of earning a livelihood; that the foreman of the said plaintiff was directed to cease work although he was not a member of the local of the union in Somerville, being a member of another local of the same international organization and that although the said foreman was perfectly content with his hours, wages and working conditions, he was afraid to continue at work, for if he persisted in disobeying the orders of the union he would be expelled from the union and thereby be deprived of earning a livelihood.

10. It is impossible for plaintiff to proceed with the work with non-union labor because if non-union labor could be obtained the other building trades engaged in the construction of the building would strike and all of the work of the plaintiff throughout the entire country would be struck by orders of the said unions. There was and is no depute between the employees of plaintiff with regard to wages, hours and working conditions. The employees are content to work under the union conditions prevailing in the district of Somerville, but are afraid to do so for if they disobey the orders of the union they will be expelled from the union and will be deprived of the opportunity of earning a livelihood.

11. Since on or about the 21st day of February, 1925, plaintiff has been unable to proceed with the work. At the time work was stopped it was about 30 per cent. complete. Unless the plaintiff is permitted to proceed with its work free from interference upon the part of the defendants based upon the rule aforesaid, it will not be able to finish its work and its business will be irreparably injured. If the defendants are permitted to insist upon the enforcement of the rule plaintiffs will be prevented from obtaining contracts outside of its home and will be deprived of business of upwards of $600,000. Plaintiff has an investment in the contract for the completion of the painting in the Somerset Hospital and a profit of over $3000. Unless it is permitted to finish the work it will suffer loss of over $3000 exclusive of interest.

12. There is another rule of the said Brotherhood of Painters, Decorators and Paper Hangers of America, which provides that upon all work 50 per cent. of the employees engaged in the performance of the work shall be from the district in which the work is being done and from the locals and members of the locals of the locals having jurisdiction in said district, with which rule, plaintiff has complied.

13. This suit is of a civil nature in equity and the matter of controversy exceeds, exclusive of interest or costs, the sum or value of $3000.

14. There is a statute of the State of New Jersey entitled "An Act relative to persons combining and encouraging other persons to combine." P. L. 1883, page 36, 3 Comp. Statutes of New Jersey, p. 3051, which reads as follows:

> "That it shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or

otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any persons, persons or corporation."

Plaintiff says that said statute is in conflict with P. L. 1, Article 1 of the Constitution of the State of New Jersey in that it impairs the right of acquiring, possessing and protecting property and pursuing and obtaining safety and happiness declared by the Constitution of New Jersey to be unalienable.

15. Plaintiff says that said statute is repugnant to the Fourteenth Amendment to the Constitution of the United States, which forbids a state depriving a person of property without due process of law, the effect of said statute being to permit persons to combine to deprive an employer of the right to make contracts and to continue his business without any legal justification and that the effect of said statute is to deprive plaintiff of its property without due process of law. Plaintiff says that said statute is further repugnant to the Fourteenth Amendment of the Constitution of the United States because it denies to plaintiffs and to other employers of labor an equal protection of the law illusory, segregating and classifying employers of labor. Plaintiff invokes the jurisdiction of this court upon the ground that the rights secured to them by the Fourteenth Amendment to the Constitution of the United States as aforesaid are infringed and draw in question the validity of the statute aforesaid.

16. Plaintiff further says that it is a citizen of the State of New York and that as a citizen of the State of New York it is entitled to the equal protection of the laws in the State of New Jersey and is entitled to

the privileges and immunities of a citizen of the State of New Jersey. The effect of not granting relief to the plaintiff under the conditions existing herein will be to permit an arbitrary discrimination to be made against plaintiff based solely upon the fact that it is a non-resident of the State of New Jersey; which will drive all employers not residents of the State of New Jersey, including plaintiff, out of business in the State of New Jersey. It will result in violating the rights of plaintiff under paragraph 1, section 2 of Article 4 of the Constitution of the United States, which provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several and the jurisdiction of this Court is invoked upon that ground.

17. As a citizen of the United States plaintiff is entitled to acquire, possess and protect property and to pursue safety and happiness, and to deny relief to plaintiff under the circumstances of this case would be to abridge his privileges and immunities as a citizen of the United States secured to him by the Fourteenth Amendment of the Constitution of the United States and the jurisdiction of this Court is invoked upon that ground.

18. Plaintiff further shows that the action of the unions is violative of the rights of persons not members of the union and also violative to the rights of owners of property secured to them by P. L. 1, Article 1 of the Constitution of New Jersey, to wit: the right of acquiring, possessing and protecting property and pursuing and obtaining happiness and is also violative of their rights secured to them by the Fourteenth Amendment to the Constitution of the United States, which forbids a state to deprive any person of property without due process of law and which forbids a

state from denying to any person within the jurisdiction the equal protection of the law and is also violative of their rights as citizens of the United States secured to them under the Constitution of the United States to acquire, possess and protect property and to pursue safety and happiness.

19. Plaintiff further says that the rule of said union is in unfair restraint of trade, inimical to public welfare and in violation of the public policy, both of the State of New Jersey and of the United States and that the combination and conspiracy is one denounced by the Act of July 2, 1890, Chapter 647, 26 Statutes at large, page 209, of the United States making illegal contracts, combinations and conspiracies in restraint of trade or commerce among the several states illegal.

20. Plaintiff further says that Section 20 of the Act of Congress of the United States of October 15, 1914, Chapter 323, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" known as the Clayton Act is, if construed to prevent relief, unconstitutional, and null and void under the Constitution of the United States in that it permits plaintiff to be deprived of property without due process of law within the meaning of Article 5 of the amendments to the Constitution of the United States and in that it improperly restricts the extent of the judicial power of the Courts of the United States, which by P. L. 1, section 2 of article 3 of the Constitution of the United States extends to controversies between citizens of different states.

21. Plaintiff says that as matter of fact there is no controversy between plaintiff and its employees.

22. Plaintiff says that this case arises under the Constitution and laws of the United States and the jurisdiction of this Court is invoked upon that ground.

23. Plaintiff's injury is irreparable and plaintiff has no adequate remedy at law and therefore prays:

1. That the defendants in this suit, who are, Local No. 734, Brotherhood of Painters, Decorators and Paper Hangers of America; Brotherhood of Painters, Decorators and Paper Hangers of America; George W. Hoffman and Harry S. Warren, may answer this bill without oath and each statement therein made.

2. That the defendants, their officers, agents, servants, employees, attorneys and all other persons acting in concert or participating with them, may be enjoined and restrained:

a. From ordering, advising, encouraging, participating in, persuading, contributing money or advice, to any strike or cessation of work of any of complainant's employees upon the ground that plaintiff should in the district of New Jersey comply with union conditions prevailing in the district of New York or elsewhere than in the place in which the work is being done.

b. From entering upon the work upon which plaintiff is engaged and from approaching any employees of plaintiff for the purpose of interfering in any manner, shape or form, whatsoever between plaintiff and its employees, upon the ground that plaintiff should observe the union conditions prevailing in the City of New York or elsewhere than in the place in which the work is being done.

c. From ordering any person or persons, including members of said union, and from suggesting to any person or persons, including members of said union, that they should refrain from being employed by plaintiff, and from proceeding to, in any manner whatsoever, discipline any of the

members of said union for working for plaintiff, and from doing any act or thing whatever to restrict plaintiff or its employees from the free and unhindered control and conduct of plaintiff's business, and from doing any acts or things in an attempt to enforce the provision of the rule of said union referred to in the bill of complaint, which said rule in effect requires a foreign contractor to observe the union conditions prevailing in the place from which he comes if these union conditions are more favorable to the union than those prevailing in the place in which the work is being done, otherwise to observe the union conditions prevailing in the place in which the work is being done.

d. From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever, any person or persons to attempt to commit or to commit any or each of the aforesaid acts.

e. From calling or suggesting sympathetic strikes and from carrying on any boycott of plaintiff.

3. That the rule of the said union mentioned in the bill of complaint may be adjudged and declared illegal and void and that all steps taken to force and put into effect said rule be adjudged and declared illegal and void.

4. That the temporary restraint as aforesaid pending the determination and order of this Court be granted to plaintiff.

MERRITT LANE,
Solicitor for and of Counsel with Complainant.

ANSWER TO BILL OF COMPLAINT.

(Filed April 15, 1925.)

The defendants answering the bill of complaint in the above cause say the defendant, Harry S. Warren, resides at Trenton, N. J.; George W. Hoffman resides at Somerville, N. J.; Local No. 734, Brotherhood of Painters, etc., maintains an office at Somerville, N. J.; and defendant Brotherhood of Painters, Decorators and Paper Hangers of America is a corporation that has its principal office at Lafayette, in the State of Indiana.

1. They admit paragraphs 1 and 2, except that part of paragraph 2 which says that the defendant Brotherhood of Painters, Decorators, and Paper Hangers of America is a voluntary organization and as to that, they say that said defendant is incorporated in accordance with the laws of the State of Indiana.

2. As to paragraph 3 they do not have sufficient knowledge or information on which to form a belief and leave plaintiff to make such proof as it may be advised.

3. As to paragraph 4, they deny that the Brotherhood of Painters, Decorators and Paper Hangers of America is an unincorporated, voluntary organization, but admit that it is made up of various districts and locals located throughout the United States. They deny the remainder of paragraph 4 of the complaint.

4. They deny paragraphs 5, 6, 7 and 8.

5. They admit the paragraph that is secondly numbered seven.

6. They deny the paragraph that is secondly numbered eight.

7. They deny paragraphs 9, 10 and 11.

8. They admit paragraph 12 and deny paragraph 13.

9. They admit the existence of the statute of the State of New Jersey referred to in paragraph 14, but deny that such statute is in conflict with P. L. 1, Article 1, of the Constitution of the State of New Jersey or any other part of said Constitution.

10. They deny paragraphs 15, 16, 17, 18, 19, 20, 21, 22 and 23, and pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HENRY CARLESS,
Attorney for Defendants.

REPLICATION TO ANSWER.

(Filed April 18, 1925.)

Plaintiff joins issue upon the answer ot the defendants.

MERRITT LANE,
Attorney of Defendants.

OPINION OF THE COURT
On Motion for Injunction, etc.
(Filed April 14, 1926.)

RUNYON, *District Judge:*

The complainant, Barker Painting Company, having its main office in New York City, is a corporation engaged in the painting industry, and for years has accepted and executed contracts in many localities situate throughout the eastern part of the United States.

The defendant, the Brotherhood of Painters, Decorators, and Paper Hangers of America, is a national labor union composed of workers engaged in the various branches of the painting and paper hanging industry, and, as an organization, is made up of local unions, approximately twelve hundred and fifty in number, located in all sections of the United States and Canada.

Local No. 734 is one of such local unions of the national Brotherhood and represents the organized painters and decorators of the town of Somerville, New Jersey, and vicinity. George W. Hoffman and Harry S. Warren, are, respectively, local business agent and general organizer connected with the Brotherhood.

The situation confronting the Court is the result of a contract secured by the complainant for the painting of the Somerset Hospital at Somerville, New Jersey, and in the performance of which it was engaged when its workmen, who were all union men and receiving wages at the union rate obtaining in Somerville and vicinity, were informed by local representatives of the Brotherhood that their continued work at that rate constituted a violation of the Brotherhood's rules. In consequence of the information thus imparted, the members of Local No. 734, after making demand for the rate contemplated in the rule and being refused,

withdrew from their labors and progress was brought to a halt, a situation which continued until a temporary injunction against the defendants was obtained from this Court, resulting in the resumption of work on the contract.

The present application aims to secure eventually a final and authoritative ruling as to whether or not the defendants, as a matter of public policy, are within their constitutional rights in attempting to enforce the rules which are here involved, by the imposition of penalties upon members for disobedience; to which system the members voluntarily submit themselves.

In the year 1921, at its convention held at Dallas, Texas, the Brotherhood of Painters, Decorators, and Paper Hangers proposed an amendment to its constitution which was subsequently ratified by the membership and incorporated in said constitution as Section 62.

The amendment, or rule, as it is called by the membership, reads as follows:

> "Where there is a difference between the wage scale of two cities all members employed upon a job done in one of the two cities by an employer from the other (whether sent from the city in which the employer's place of business is situated or hired in the city where the work is done) shall receive the higher of the two wage scales."

This rule was supplemented by another rule which provides that upon any job done by an outside employer at least 50 per cent. of the employees engaged on such job shall be hired from the locality in which it is being performed.

At the time the contract herein was made the prevailing scale of painters' wages in Somerville and vicinity was eight ($8.00) dollars for an eight-hour day, and in the City of New York ten and a half ($10.50)

dollars for an eight-hour day. And it was in view of the provisions of said rule above quoted, and because of the refusal of the complainant herein to pay the higher or New York rate that the workers, who were practically all local men, members of Local 734, and coming from the vicinity of Somerville, discontinued their work.

The present litigation is in all respects the counterpart of another action instituted in the Court of Chancery of New Jersey wherein the New Jersey Painting Company was complainant and the present Brotherhood, its Local No. 26 of Newark, New Jersey, and others were defendants, and which action eventually reached and was disposed of by the New Jersey Court of Errors and Appeals, the question at issue being in substance identical with the present one.

The original hearing in said case was had before Vice-Chancellor Backes, who decided that the strike in said matter was called in furtherance of an unlawful purpose, the same being in effect to "discriminate against employers in the matter of wages, based upon the illusory ground that the employer is not local to the place of work . . . in unfair restraint of trade, inimical to public welfare and in violation of public policy," further holding that "any attempt of the union to impose its will by the coercive means of strike would be an unwarranted and unlawful exercise of the power of might."

The injunction prayed for was granted by the learned Vice-Chancellor, and from his decision the defendants carried their appeal to the Court of Errors, which Court adopted an essentially different view from that of the Vice-Chancellor and, speaking through Mr. Justice Black, reversed the Chancery Court's decree.

Because of its illuminating nature, and also because it is the utterance of the Court of last resort in New Jersey, I have taken the liberty of quoting somewhat generous excerpts from this opinion, as follows:

"The meritorious question involved in this case is a controversy between an employer and organized labor. The bill of complaint filed contains a prayer for an injunction, against the defendants from ordering, advising, encouraging, participating in, persuading, contributing money or advice to any strike or cessation of work of any of complainant's employees. Also, from suggesting to any person or persons, including members of said union, that they should refrain from being employed by the complainant. The bill of complaint specifically charges that in the month of January, 1922, at a convention of the International Painters and Paper Hangers, held at Dallas, Texas, the convention passed a rule, that, where a contractor took work away from his home town, he should pay the rate of wages and observe the union conditions prevailing in his home town, if that rate of wages or working conditions were more favorable to the workman, than the union scale prevailing in the district in which the work was to be done, otherwise, he should pay the union scale and observe the union conditions prevailing in the place in which the work was to be done.

"It is further alleged, that such a rule is illegal and violative of the Constitutional right of employers of labor, in that, it creates an illegal and unjust discrimination. It has, so it alleged, the effect of making it more expensive for the person not living in the particular district to do work therein."

. . . . . .

"The decree follows closely the prayer of the bill and grants the restraint prayed for, with-

out specifically mentioning the Bamberger job. It restrains the defendants from doing any acts or things, in an attempt to enforce the provisions of the rule of the said union referred to in the bill of complaint. The grounds upon which the decree was advised by the learned Vice-Chancellor are, that such discrimination in the scale of wages is an unfair restraint of trade, inimical to the public welfare and in violation of public policy; that, the operation of such rules and regulations by the union is illegal and the strike is for an unlawful purpose. There is substantially no dispute about the facts. So, the whole problem for solution may be stated in a single sentence. Is such a rule of the defendants legal; and, if so, may it be enforced by penalties imposed upon its members for disobedience, which they submit to voluntarily, without violating the law? Thus, it will be seen, that the question involved is much narrower in its scope and quite clearly distinguished from any of the adjudged cases that we have examined or cited, involving labor disputes."

. . . . . .

"In 1883 the Legislature of New Jersey passed an Act which provides (1) 'That it shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise, or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons or corporation.' *P. L. 1883, p. 36; 3 Comp. Sts. of New Jersey, p. 3051,* SEC. 128.

"The statute was referred to by this Court, in the case of *Jonas Glass Co.* v. *Glass Bottle Blowers Asso.*, 77 N. J. Eq. 219, thus, the act of 1883 is properly to be treated as merely rendering the combination no longer indictable; in effect, as repealing the rule laid down by the Supreme Court of this State in the case of *State* v. *Donaldson,* 32

N. J. L. 151. This statement was unnecessary to the decision of that case. It was *mere dictum.* The basis, if not an exact copy of that statement was an oral deliverance by Vice-Chancellor Pitney, in he case of *Frank and Dugan* v. *Herold,* 63 N. J. Eq., 447. The statute is much broader in its scope, than the above statement or dictum would seem to indicate.

"This statute has been under consideration in the Court of Chancery in several cases; thus, by Vice-Chancellor Green in the case of *Mayer* v. *Journeymen Stonecutters Ass.,* 47 N. J. Eq., 531, where the learned Vice-Chancellor said: 'So long as they (i. e., the workers) confine themselves to peaceable means to effect these ends (i. e., the control of the work connected with their trade) they are within the letter and spirit of the law, and not subject to the interference of the courts,' *Barr* v. *Essex Trades Council,* 52 N. J. Eq. 119. This case was cited with approval by the Supreme Court of Missouri in *Lohse Patent Door Co.* v. *Fuelle,* 215 Mo. 457. This statute left still subject to the inhibition of law every other illegal combination, except these mentioned in the statute. So, in the case of *Cumberland Glass Mfg. Co.* v. *Glass Bottle Blowers Ass.,* 59 N. J. Eq. 53, Vice-Chancellor Reed said: 'By its terms (i. e., the statute) it is lawful for workmen to combine to persuade, by peaceable means, any person or persons to enter into any combination for the leaving or entering into the employment of any person or persons or corporation. The words employed by the statute cover a combination for the purpose of persuading others to combine for the purpose of entering or leaving an employment. According to the act, the means adopted must be peaceable.' *Jersey City Printing Company* v. *Cassidy,* 63 N. J. Eq. 762. *Baldwin Lumber Co.* v. *Local Bo. 560,* 91 N. J. Eq. 240."

. . . . . .

"The mere combination of action is not the element which gives an illegal character to the

act. It is the illegality of the purpose to be accomplished, or the illegal means used separately or in furtherance of the purpose, which makes the act illegal. *Lindsay & Company* v. *Montana Federation of Labor*, 37 Mont. 264, 273; 18 L. R. A. N. S. 707. *Vegelahn* v. *Guntner*, 167 Mass. 92, 98; 16 L. R. A. N. S., note p. 85.

"The rule adopted and promulgated by the defendants is not aimed at and does not apply to the complainant solely. It does not seek to establish arbitrary discriminations between one person or corporation and another. It applies to all employing painters within the whole territory of the United States, who undertake to do work outside of their home districts. It applies to all alike, automatically, who come within the prescribed rule. Co-operation in some form now seems to be an economic necessity, in all business, trades and occupations, throughout the United States, if not, throughout the entire world."

. . . . . .

"Nearly all the cases in this country quite uniformly hold, and the complainant seems to concede, that the union may arbitrarily fix a uniform scale of wage applicable to all its members and strike to enforce its demands, i. e., either to maintain or advance a scale of wages; and the strike will not be interfered with by the courts, if it is lawfully carried on. *Bossert* v. *Dhuy*, 221 N. Y. 342. But the argument by the complainant followed by the learned Vice-Chancellor in this case, seems to be based upon the idea, that the union cannot in good faith frame or adopt a rule providing for a sliding scale of wages, to fit ostensibly the varying local economic conditions throughout the United States, which in effect does discriminate against some employers, as a class, in the matter of wages to be paid. It seems to be based upon the ground that, such regulations create an unfair restraint of trade. The attack is aimed not at the combination but at its effect upon

the employer. This is unsound, both legally and economically. In the last analysis, the prime object of the rule attacked is to establish a standard of wages. It is hardly necessary to enter into any extended discussion, pointing out that in law or by analogy Article 4 sec. 2 and Article 14 sec. 1 of the Constitution of the United States, are not applicable to private contracts. These sections are directed against state action only: *United States* v. *Harris,* 106 U. S. 643. Economically, the conclusion reached by the lower court confuses the possible or probable effect of the defendant's action upon the employers with the defendant's rights. The law gives the defendants a right to sell their labor to whom they please, when and under such conditions as they may fix, individually or in combination. They may make rules and regulations passed in good faith, providing for what they deem to be an economic advantage to themselves. If in the enforcement of such rules and regulations, they violate no law, but act solely for the declared purpose, the courts ought not and cannot legally enjoin them from such concerted action, simply, because, such action may affect some employers. How can it be said that such rules and regulations create an unfair restraint of trade? If the law gives the workers such rights, it must protect them in their employment. They cannot be enjoined from their use or interfered with by the courts. Employers have no vested interest in the labor of workers. We think the defendants, by the terms of the Statute of 1883, both its letter and spirit are within its protection. They are also within the protection of the law as declared in the cases cited. The cases, in which concerted action on the part of a body of workers has been held unlawful, have invariably been such, in which either the object sought to be attained had little or no bearing on the interest of the workers or in which the methods employed by them were in themselves unlawful."

In reviewing this opinion, counsel for the petitioner in the instant case contends that the combination itself constitutes the offense complained of; that while each individual member of the union, if acting alone, had and has an indisputable right to stop work, and all because his employer, coming from a higher jurisdiction wherein higher wages are paid, refuses to pay him that higher rate, yet the concerted action of the same individuals, seeking the same advantage for the same cause, and producing the same effect, constitutes, of itself, an offense, in that such combination takes the situation out of the domain of the privilege which is each man's inalienable right, and into the domain of relative rights wherein the employer, the workers, and the public are parties.

If the entire transaction, as instituted by each individual member and carried to the point of actual cessation of work, is neither inherently bad nor constitutes an offense; if such transaction, duplicated a hundred times by that number of individuals, constitutes no such offense, it follows that the offense herein —if any there be—lies neither in the ultimatum of the individual worker, nor in his withdrawal from his work, nor in the hundred other duplications of such procedure; nor in having, through such means, brought the employer's business to a standstill—a disastrous standstill, perhaps—but must arise from the fact that these individuals have not acted, each for himself, but collectively, and as members of an organization.

And even so, the trend of modern economic usage, both as practiced and as given expression in the courts, is increasingly against regarding combinations among laborers as unlawful *per se,* but narrows its condemnation to those combinations which are formed for the purpose of effecting an unlawful object, or the doing

of a distinct injury to one against whom the activities of the combination may be directed.

> "Courts differ as to what constitutes a boycott that may be enjoined. All hold that there must be a conspiracy causing irreparable damage to the business or property of the complainant."
>
> Gompers v. Bucks Stove and Range Co., 221 U. S. p. 437.

Assuming, therefore, that a combination is not unlawful, *per se*, inquiry must be directed to the ascertainment of the objects of the present combination, and the mode and method adopted in putting such objects into practice, whether or not they be lawful; and also to the effect thereby produced.

There are divers objects sought in the organization of labor; the betterment of general working conditions, the adoption of proper safety appliances, workmen's compensation in cases of injury and death, hours of labor, etc., etc. And by no means the least of these objects is that one which deals with wages.

A reading of the rule adopted at Dallas furnishes ample proof that, in the minds of those who framed its terms, there was one main plan—that of increasing wages under certain conditions therein named. Whatever dispute there may be regarding these conditions, the fact must remain that there was in contemplation their utilization as a basis for wage increase.

By itself, the quest for increased wages is a lawful object; and, therefore, if in the present case, in connection with the object of securing increased wages there appears that which is unlawful, it is to be found in one or more of the following factors: either in the residential feature of the rule, or in the methods adopted in the attainment of the object, or in the effect which such attainment has produced.

The record herein is barren of any showing of intimidation, violence, or disorder of any sort on the part of those who ceased work, or of those representatives of the unions at whose instance the demand for higher wages was made, and so this feature may safely be eliminated as in no wise having contributed to possible illegality.

With reference to the residential feature of the rule here involved, it has been urged in the dissenting opinion in the New Jersey Court of Errors and Appeals that an unlawful discrimination was thereby enforced because not founded upon any subject properly germane to the difference in wage scales involved, and that such discrimination is violation of the Constitutional right of every citizen to enjoy all privileges and immunities of citizens in the several states.

Had the rule in question drawn a specific line of demarcation, basing its operation avowedly upon differences in State citizenship, I can conceive that such differentiation would constitute an unlawful and forbidden discrimination, but as I read the rule, it is not subject to that interpretation, concerning itself in no wise with state lines, but applying to anybody and everybody who essays to do business outside of his home city, whether it be in a neighboring town in his own state, or in some distant foreign jurisdiction.

In other words, this rule applies with equal force and effect to everybody, regardless of state residence, who is similarly situated and, in such application, I take it, frees itself of the charge of effecting an unlawful discrimination.

And while there may be wide differences of opinion regarding the logic involved in, or the soundness of, a rule wherein the home city of a contractor enters as a factor in the fixing of the wage scale, provided he is doing business in a locality where the rate of wages

is less than in his home city, yet, even so, it can hardly be urged as a general proposition that the matter of residence is not one germane to the question of wages, since it is, in a real sense and under all ordinary conditions, the controlling factor. A contractor, living and doing business in a small town, pays his workers the union wage scale established for that town. Eventually, and of his own accord, moving his business and establishing it in a large city, he accepts the altered conditions and pays the identical staff of workers the enlarged rate of the metropolis, for with the change of his "home city" has come the consequent change in the stipend of his workers. Therefore, I believe the basis of the rule here involved is not at all artificial, as may at first have appeared, but has both reason and custom to support it and comes within the rules laid down in the following: Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without such basis."

Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U. S. 155.

"While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis."

Southern Ry. Co. v. Greene, 216 U. S. 417.

The natural effect of all of the foregoing is to equalize, at the higher rate, the wages of all workers employed under the conditions set out in the rule under

review, and thus, as it appears to me, the object and effect of the rule are lawful, as are also the foundation laid and the means relied on for its enforcement.

The case of Truax v. Corrigan, 257 U. S., p. 312, is strongly urged in support of the alleged illegality of the rule, both as to its provisions and its operation, but as I read that case, it is far removed from the instant one.

In that case the distinct object of the concerted action was to injure the plaintiff's business in order that he might be forced to meet the defendant's demands, and the means adopted to cause that loss were little short of scandalous, consisting in part, as they did, of virulent attacks upon the character, not only of the plaintiff and his business, but also of those who patronized the plaintiff. The effect of this destructive campaign was ruinous to the plaintiff's business, and the Supreme Court holds that a state statute which in practice denies legal relief in all forms, or, at the least, equitable or injunctive relief, under such circumstances, is defective, in that it fails to afford all the equal protection of the laws. The inequality in the operation of the statute was based upon the fact that it favored plaintiff's ex-employes—parties whose relationship with plaintiff had in reality ceased—in exempting them as parties to a labor dispute from the operation of a law made applicable to all others who might seek to destroy plaintiff's business and property, and in so doing, proceed exactly as these ex-employes did.

And while the actual facts and circumstances of this Truax case remove it far from those of the case under consideration, making it, apparently, much more susceptible to attack from a conspiracy standpoint, it is significant of the strong tendency to uphold concerted action in labor disputes, that dissenting opinions were filed by three members of the Court, Justices

Holmes, Pitney and Brandeis, Mr. Justice Clarke concurring in the opinion of Mr. Justice Pitney, and all to the effect that the Arizona judgment should have been affirmed.

Because of the foregoing, and because the New Jersey Court of Errors and Appeals in the kindred case of New Jersey Painting Company v. Local No. 26, above referred to, in applying the statute of 1883 (P. L. 1883, p. 36, 3 Comp. Stats. of New Jersey, p. 3051, Sec. 128) to the circumstances of that case, approves it as warranting the cessation of work on the part of the employes there concerned, I am of the opinion that in this case the defendants have acted altogether within their legal rights, and that the injunctive restraint heretofore granted should be dissolved.

FINAL DECREE AND EXCEPTIONS THERETO.

(Filed March 23, 1928.)

The above entitled cause coming on to be heard before the court in the presence of Merritt Lane, of counsel, with the complainants and Henry Carless, of counsel, with the defendants and the proofs offered by the respective parties having been taken in open court and the court having considered the pleadings, proofs and argument of counsel and being of the opinion that the complainant is not entitled to the relief sought in its bill of complaint;

It is on this seventh day of March, 1928, ORDERED, ADJUDGED and DECREED that the complainant's bill be and the same is hereby dismissed with costs.

WM. N. RUNYON,
J.

An exception to the decree is prayed by the complainant and it is allowed and signed and sealed accordingly.

WM. N. RUNYON,
Judge. (L. S.)

PETITION OF APPEAL AND NOTICE OF APPEAL.

(Filed June 4, 1928.)

To the Honorable the Judges of the United States District Court, for the District of New Jersey:

Barker Painting Company, the above named complainant in the above entitled cause, feeling itself aggrieved by a final decree made and entered by the above named court, in the above entitled cause, under date of March 7, 1928, wherein and whereby, among other things, it was and is ordered and directed that the bill of complaint of the complainant be dismissed with costs to the defendants, does hereby appeal to the United States Circuit Court of Appeals, for the Third District, from such decree and from every part thereof for the reason that under the law and the facts the United States District Court, for the District of New Jersey, should have granted the relief prayed for by complainant, and it prays that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit, and that a decree may be made granting the relief prayed for by the complainant in the bill of complaint.

MERRITT LANE,
Solicitor for and of counsel with Complainant.

ORDER ALLOWING APPEAL.

(Filed June 4, 1928.)

On motion of Merritt Lane, solicitor for and of counsel with complainant:

It is on this fourteenth day of June, 1928, ORDERED an appeal to the United States Circuit Court of Appeals, for the Third Circuit, from a final decree heretofore filed and entered herein be and the same is hereby allowed and that a copy of the record, testimony, exhibits, etc., and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals, for the Third Circuit.

And it is ordered that the bond on appeal be fixed at the sum of $300.00.

WILLIAM L. CLARK,
Judge, U. S. District Court.

An undertaking on appeal in the sum of $300.00, as required by the order allowing appeal, which said undertaking or bond was approved by the Hon. William N. Runyon and ordered filed.

Citation on appeal, directed to all of the defendants, requiring them to appear in the United States Circuit Court of Appeals for the Third Circuit within thirty days from the fourth day of June, 1928, the service of which citation was duly acknowledged by the attorney for all of the defendants upon the fourth day of June, 1928, and which citation was returned and filed upon the fourth day of June, 1928.

Extensions of time signed by the District Judge, extending for ninety days each the term "within which

the complainant may take an appeal and within which to settle and sign the bill of exceptions and to file assignment of errors, and for all other purposes of the above mentioned cause, original or appellate," the last of which said extensions expires upon the twentieth day of May, 1929, each of which said extensions was duly signed and filed prior to the expiration of the term.

ASSIGNMENT OF ERRORS.

(Filed March 12, 1929.)

The United States District Court for the District of New Jersey, which entered the decree of dismissal of plaintiff's bill, erred as follows:

1. In dismissing the bill of complaint with costs.

2. In refusing to grant an injunction against the defendants in accordance with the second prayer of the bill of complaint.

3. In declining to adjudicate that the rule of the unions mentioned in the bill of complaint is illegal and void, and that all steps taken to enforce and put into effect said rule are illegal and void.

4. In holding that the rule referred to in the bill of complaint had as an object increase of wages and the adoption and enforcement of such rule was within the legal right of defendants.

5. In refusing to hold that said rule and the attempt to enforce it was illegal, and to attempt to enforce it against plaintiff under the circumstances proven in the case was illegal, and its enforcement by the conduct of the defendants as shown in the evi-

dence constituted a deprivation of plaintiff's property without due process of law and a denial to it of the equal protection of the law, violating the provisions of the guarantees of the Constitution of the United States in the particulars and respects stated.

6. In refusing to hold that the said rule and the efforts to enforce it, as shown by the evidence, as against plaintiff are unlawful as creating monopolies; and illegal, unjust, oppressive, discriminatory, inimicable to public welfare, violative of public policy and in unfair restraint of trade and constitute an unlawful combination, and that the defendants engaged in enforcing said rule as against plaintiff are guilty of an unlawful combination and conspiracy directed particularly and especially against the plaintiff, causing it irreparable injury, loss and damage and deprive plaintiff of the contract rights referred to in the bill of complaint, and would utterly and completely destroy the business of plaintiff outside of the City of New York.

7. In refusing to hold that the action of the defendants, set forth in the evidence, is violative of the rights of owners of property, including plaintiff, secured to them by P. L. 1, Article 1 of the Constitution of the State of New Jersey, to wit: "the right of acquiring, possessing and protecting property and pursuing and obtaining happiness," and is also violative of their rights as citizens of the United States secured to them under the Constitution of the United States, "to secure, possess and protect property and to pursue safety and happiness."

8. In refusing to hold that the rule and the efforts to enforce it were in unfair restraint of trade, inimicable to public welfare and a combination and conspir-

acy denounced by the Act of July 2, 1890, Chapter 647, 26 Statutes at large, page 209, of the United States, making illegal contracts, combinations and conspiracies in restraint of trade or commerce among the several states and its supplements and amendments.

9. In refusing to hold that the conduct of the defendants was not within the protection of Section 20 of an Act of Congress of the United States of October 15, 1914, Chapter 323, entitled "An Act supplementing existing laws against unlawful restraint and monopolies and for other purposes," known as the Clayton Act.

10. In refusing to hold that if the conduct of the unions be within the provisions of said section last above referred to, then said section is unconstitutional and null and void under the Constitution of the United States in that it permits plaintiff to be deprived of property without due process of law within the meaning of Article 5 of the amendments to the Constitution of the United States and in that it improperly restricts the extent of the judicial power of the Courts of the United States, which by P. L. 1, Section 2 of Article 3 of the Constitution of the United States, extends to controversies between citizens of different states.

11. In refusing to hold that the conduct of the said defendants, as shown by the evidence, is not within the protection of a statute of the State of New Jersey entitled "An Act relative to persons combining and encouraging other persons to combine," P. L. 1883, p. 36, 3 Comp. Stat. of N. J., p. 3051.

12. In refusing to hold that, if the conduct of the said defendants, as shown by the evidence in this case, be within the protection of the act last above mentioned, then that such statute is in conflict with P. L. 1, Article

1, of the Constitution of the State of New Jersey, in that it impairs the right of acquiring, possessing and protecting property and of pursuing and obtaining safety and happiness, declared by the Constitution of New Jersey to be inalienable.

13. In refusing to hold that, if the conduct of the said defendants, as shown by the evidence, is within the protection of said statute last above referred to, then that such statute is unconstitutional, as repugnant to the Fourteenth Amendment to the Constitution of the United States which forbids a State depriving a person of property without due process of law, the effect of said statute being to permit persons to combine to deprive an employer of the right to make contracts and to continue his business, without any legal justification and that the effect of said statute is to deprive plaintiff of its property without due process of law.

14. In refusing to hold that if the conduct of the defendants, as shown by the evidence, be within the protection of said statute then that said statute is unconstitutional, as repugnant to the Fourteenth Amendment to the Constitution of the United States because it denies to plaintiff and to other employers of labor the equal protection of the law.

15. In refusing to hold that the effect of not granting relief to the plaintiff under the condition shown by the evidence would be to permit arbitrary discrimination to be made against plaintiff based solely upon the fact that it is a non-resident of the State of New Jersey, and would result in violating the rights of plaintiff under paragraph 1, section 2 of Article 4 of the Constitution of the United States, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.

16. In holding that the record was barren of any showing of intimidation on the part of defendants and that the means adopted by the defendants to enforce said rule were lawful.

17. In refusing to hold that the means adopted by the defendants to enforce the rule were intimidative and unlawful.

18. In refusing to hold that the rule referred to in the bill of complaint is not founded upon any subject properly germane to the wage scale or the difference in wage scale and that the discrimination against the plaintiff is an illegal boycott and unlawful.

19. In overruling the offer of Defendants' Exhibit P-3 for identification.

(Sgd.) MERRITT LANE,
Attorney for Plaintiff.

STATEMENT OF EVIDENCE, APPROVED AND SIGNED.
(Filed March 12, 1929.)

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF NEW JERSEY.

No. 1160. IN EQUITY.

BARKER PAINTING CO.,
Plaintiff,

v.

LOCAL NO. 734, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, ET ALS.,
Defendants.

BE IT REMEMBERED, that the above-entitled cause duly came on for hearing before the HONORABLE WILLIAM N. RUNYON, Judge of the United States District Court, sitting in equity on the eighth day of May, 1925, MERRITT LANE, Esquire, appearing for the complainant, and HENRY CARLESS, Esquire, appearing for the defendant, and thereon the following occurred. The plaintiff to maintain the issue upon its part joined, offered evidence as follows:

PLAINTIFF'S EVIDENCE.

By ARTHUR J. ROSENTHAL: That he is the president of the plaintiff company and has been a contracting painter and decorator for fourteen years; that plaintiff is a corporation organized under the laws of the State of New York, with its offices at 225 East Forty-fourth Street, New York City, and, in the last

two or three years, it has performed work outside of the State of New York, including the Mayflower Hotel, Washington, D. C.; the Syracuse Hotel, Syracuse, New York; the Niagara Hotel, Niagara Falls, New York; the Penn Harris Addition, Harrisburg, Pennsylvania, and more than fifty others, its business extending over the entire United States from New York to Winnipeg, New Orleans to New York, to Dallas, and New Orleans to Winnipeg; that the witness personally, in the past fourteen years, has been interested in several thousand contracts for painting and decorating, in amount from four and five hundred dollars to one hundred and fifty thousand dollars, and over the territory above named; that he himself puts the price on most of the jobs and is fully familiar with the painting business generally that it is of a highly competitive nature; that he has discussed with others the matter of estimating on the jobs, and over objection and exception of the defendants, the witness then said that painting and decorating contractors, in estimating on the jobs, did not figure on the price of labor at the rate prevailing in the territory of the contractor's residence, but figured on the prevailing rate at the place where the work was to be performed; that in the case of plaintiff if on its outside work, that is work outside of the territory of New York, it figured on the rate prevailing in the territory of New York, the place of residence of plaintiff, it could not get the job because the local contractor would always get it, and competition would be destroyed; that 65 per cent. of the contract price on a job of painting and decorating is the cost of labor; the witness gave as an illustration as to what it meant to be compelled to pay the rate prevailing at the place of the residence of plaintiff, a job which it had for the painting and decorating of the Hotel Statler, in Buffalo, and, over objection and exception, the witness was permitted to say that the job represented over $100,000 and that it completed the job

itself with union labor at the rate prevailing in Buffalo, and that if it had been compelled to pay the rate for labor prevailing in the territory of New York of which plaintiff was a resident, it would have made a difference of from fifteen to eighteen thousand dollars; that the witness is fully familiar with the extent of the unionization of the painting industry throughout the United States; that he is obliged to be familiar with that situation and has been for years, in order that he may conduct the business of plaintiff and make estimates on jobs, and that he is the vice-president of the Employers Association of New York City, that is, the National Association, and in that capacity is acquainted with the trades in all lines pretty well throughout the country; that on all building trades on new work throughout the United States, the painting and decorating industry is practically 100 per cent. unionized and likewise in New Jersey; likewise in Connecticut; likewise in Pennsylvania, and that it has been so unionized for the past eight or nine years; that it is impossible for plaintiff to perform any painting and decorating work either in New York, Pennsylvania, Connecticut or New Jersey without union labor; that all building trades on all new work throughout the United States, with the exception of spots like San Francisco, Chicago and Philadelphia, are practically 100 per cent. union and that that applies to the States of New Jersey, Pennsylvania, Connecticut and New York; that in New Jersey all of the building trades are 100 per cent. union; that in New York they are gathered together in two building trades council, one council comprising twenty-six trades and another council five trades; all affiliated with the American Federation of Labor; that union members of one trade will not work upon a building where non-union members are employed in another trade; that if it were possible for plaintiff to obtain non-union men to work under present conditions upon any building in New York or New Jer-

sey plaintiff could not do so because on all jobs which it had scattered throughout the country the painters would refuse to work for plaintiff because it employed non-union men, the position of the union being that a man cannot be fair in one town and unfair in another; that if plaintiff should employ non-union men on the Somerset Hospital in New Jersey, although it was employing all union men on the other jobs it had throughout the country, those jobs would be stopped; that if it employed non-union men on the Somerset Hospital, the other trades employed on the Hospital would refuse to work and the building would be stopped; that the rate of union wages prevailing in New York, the residence of plaintiff, is $10.50 for eight-hour day; in Washington nine dollars per day for eight-hour day; in Buffalo (answered over objection of counsel) eight dollars a day; in Somerville, New Jersey, on the eighth day of November, 1924, the rate was eight dollars a day; that rate has been changed and the witness thinks it is now nine dollars a day, but it is, in any event, under the New York rate; about the eighth day of November, 1924, plaintiff made a contract for painting and decorating the Somerset Hospital, in Somerville, New Jersey, and the contract was offered in evidence and marked "Exhibit P-1"; that in pursuance of that contract, work was commenced late in January, starting with a couple of men and running up to about six; that all of the men employed were union men and eight dollars a day was paid, which was the rate prevailing in Somerville, New Jersey; that the work progressed for several weeks and the men then demanded pay at the New York rate, and upon plaintiff's refusal to accede to the request, they quit the job; the work was about 30 per cent. complete; and its condition was such as that it was necessary that it be forthwith prosecuted so as not to interfere with the completion of the building; that at the time the demand for the New York rate

was made it was stated that it was because of the rule of the International Association passed at the convention held in Dallas, Texas, making it the right of the union to demand the higher wage where the employer goes out of town—a higher wage than the local rate when the employer comes from a place where a higher wage is paid; that the men employed on the hospital at Somerville, New Jersey, were, with the exception of the foreman, all local to Somerville; that upon the men quitting, the work was stopped until a temporary injunction was granted by the Court in this proceeding; that in making the estimate for the work at the Somerset Hospital, in Somerville, the plaintiff figured as it always had upon the wage prevailing at the local point, in that instance in Somerville; that during the year prior to the filing of the bill plaintiff had done approximately one million two hundred thousand dollars of work, and that its outstanding contracts at the time the men ceased working on the Somerset Hospital were in the neighborhood of several hundred thousand dollars: asked as to whether the foreman, whose name was Lemmer, was content to go on with the work, upon objection of defendant, the witness was not permitted to answer.

On *cross-examination* the witness said that there were a great many agreements in the different lines of the building trades industry providing that the men should refuse to work with non-union men and that they were just closing an agreement with the New York Painters Union in which that clause was included; that plaintiff had agreements with the Painters Union to employ exclusively union men; that the agreements necessarily implied that all union men would be working under union conditions; that such an agreement was in existence at the time it made its bid for the work on the Somerset Hospital, and that

plaintiff knew of the change in the constitution of the United Brotherhood of Painters, Decorators and Paper Hangers which provided that plaintiff's concern coming from New York, where the wage scale was higher, would have to pay the higher rate, but plaintiff denied the right of the union to make and enforce such rule; the witness knew of the decision of the Court of Errors and Appeals of the State of New Jersey deciding that the rule relating to the higher wages was a legal rule, that decision having been made in May, 1924, and the estimates on the Somerset Hospital having been made in November, 1924; that on work at the Westinghouse Company plant in Kearny, New Jersey, plaintiff paid $10.50 a day, which was the prevailing rate in New York, whereas the rate in Kearny was ten dollars a day; that the men worked five days a week; that on the Kearny job half of the men came from Newark and half from New York; that on the Firemens Building in Newark plaintiff paid $10.50 a day for five days a week, eight hours a day; that the witness does not know that the plumbers union in the City of Newark does not belong to the Building Trades Council but knows that generally the plumbers union do belong to the Building Trades Council wherever they exist, and knows that in Newark the trades generally belong to the Council, and that if the plumbers union does not it would be contrary to the general rule; that he does not know that the roofers union in the City of Newark has not belonged to the Building Trades Council for years, but does know that the 7000 carpenters in the City of Newark and Essex County have not been affiliated with the Building Trades Council for the last few months; that although there are two Building Trades Councils in New York unofficially they are—"just as though it was one council," and they work together. The witness does not know that

the respective unions are under no obligation by any rule of the American Federation of Labor or of any other labor organization to quit work in case of a dispute between any one of the—although probably there is no such rule; that this fact does not change the witness' testimony that it would be impossible to get other men to work because each union has its own rule that it will not work with non-union men in any trade; that generally if non-union conditions prevail in any one trade, the other trades will not work with non-union men; that the witness can cite many instances of sympathetic strikes in aid of the painters; that when work was started on the Somerset Hospital by plaintiff all building trades were working on the building, including the bricklayer and the plasterer, the bricklayers putting up partition work in the basement, finishing up inside, the electricians wiring, pulling wires, putting in the fixtures, carpenters "all of them were there, tile men, plumbers—" they were practically all still on the building; that when the painters quit, the other trades did not quit; that they would not quit unless plaintiff tried to man the job with non-union men, "Then they would have quit out of sympathy"; that up to the time plaintiff's employees quit on the job, no one had said anything to witness about the other trades quitting, and the following then occurred:

Q. Well, what made you think they would?

A. Well, we knew it; I have been in this game for thirty-five years and know that if we have been on a building where a strike occurs and the job was manned with non-union men, that the trades generally would walk off the building. They don't have to tell us.

Q. It isn't always so, is it?

A. Oh, you will find exceptional cases. In New York City, for instance, the agreement which we have with the old council states that in case a union breaks

its agreement, no support shall be given to union men and a union which has gone on a strike in violation of the agreement shall not be supported by the others striking in sympathy. Now, that happens around the country, in the larger cities especially.

Q. That is what they call an outlaw strike?

A. That would be an outlaw strike, yes, sir.

The witness then proceeded to testify that plaintiff did not estimate on the New York scale for outside work and that if it did "it might just as well quit business;" that plaintiff did not figure on the Westinghouse job at Kearny and the Firemens Building in Newark on the New York scale, but the scale in Kearny and Newark being within fifty cents of the New York scale, it preferred to pay the higher scale, a little more than the local scale, because the local boss hires the men the year round and plaintiff comes in but occasionally and that it was not to be expected that the men would quit a .egular job to go to work for plaintiff unless there was something in it, and plaintiff was always ready to pay five cents an hour more than the local rate, and, in some instances, to obtain labor had paid ten cents an hour more; that plaintiff paid five cents an hour more or fifty cents a day "because we can get the better men in the town and the better men is worth that and more too"; that occasionally it is necessary for plaintiff to give more inducement to get the local men to work, but that it is very seldom that it cannot get local men to man the job; that occasionally because of the shortage of labor at the local point plaintiff sent New York men to man the job, in which event it paid the board of the men and transportation, as is the usual custom, but that plaintiff does not figure in estimating on a job on the possibility of not getting local men and "A. If we find a condition occasionally where we are penalized that much, we lose it."

By ARTHUR P. DEMARAY, on *direct examination by Mr. Lane,* he lives at Somerville, New Jersey, and is a painter and member of the Brotherhood of Painters, Decorators and Paper Hangers of America, Local No. 734, having been such about a year; he was engaged by the Barker Painting Company to work on the Somerset Hospital and started work in the latter part of November, as well as he can recall and quit around the 11th or 12th of February on the order of the local representative of the union, George W. Hoffman. The following then occurred:

Q. And why did he order you to quit work, did he say?

A. No, I can't say that he did, Mr. Lane.

Q. Did you ask him?

A. Well, I don't know as I asked him personally. I heard some rumors going about among us few men that we were taken off the job on the account of we were working for local wages and should have New York City wages.

The witness continued that: he wanted to work and quit only because "we were taken off." He obeyed the orders of Mr. Hoffman to quit "as he is our representative out there, and as I understand it we are to do as he says"; he cannot say whether he would be fined or expelled if he did not quit; he was content with his wages, hours and working conditions, and had been working for twelve weeks; and the only reason why he quit was that Hoffman told him to; he did not go back to work for complainant.

On *cross-examination by Mr. Carless* the witness said that: he had been a painter about thirty years and had lived all his life in Somerville and vicinity; he had worked thirty years as a painter before he joined the union; he did not know anything about the rules of the United Brotherhood relating to the rate

of wages that should be paid except that the rate in Somerville was $8 on the first of April, 1925; he did not know before he joined, and did not learn that, according to the rules of the United Brotherhood of Painters and Paper Hangers, local men working in Somerset should receive ten dollars and a half a day if the contractor was from New York until "we were taken off the job"; before he was taken off the job, he and the other painters had not been talking the matter over and no one had spoken to him about it; he started in first with the foreman, Mr. Lemmer, and worked for probably six weeks along with him, just the two; there were three other men added about six weeks after he started toward the end of January, from which time until the time of this trouble there were five men working; the men did not talk about and did not hear about any report that they were not receiving the rate of wages they should receive, according to the rules; he never heard a word about it until the day he was taken off the job, from any source whatever; he attended every meeting of the union but never heard anything about it and never heard any communication read about it; Hoffman was at the hospital and around a little time before he ordered the painters off; he had not talked with Hoffman about the rate of wages; Lemmer, the foreman, the witness and the painters, Winsor, Demaray and Housh were working there together. The following then occurred:

Q. What did Hoffman say?

A. Well, the best I can recall, he said that, "You fellows can't continue here; you will have to let today be your last." I think that was about twelve o'clock, eleven o'clock in the morning.

He continued that: these were Hoffman's first words. The following then occurred:

Q. Yes. He told you that the local union had decided that the rules would have to be lived up to.

A. He stated that was why he was taking us off.

Q. Well, he didn't tell you to quit work; he told you about the rules, that the local union had decided that the rules should be enforced.

A. He told us to quit work.

Q. Well, what was his language?

A. In a gentlemanly way, he said, "Men, I have got to take you off this job; today must be your last," and stated why.

Q. Well, when you say he stated why, why did he say?

A. He said that, "The New York contractors are supposed by law to pay you New York wages, and you can't work unless they do."

Q. That is, he said if you didn't—didn't he say if you continued working you would be violating the union rules and he was notifying you of that?

A. Well, I can't recall that he said those words.

Q. And that if you continued working after today you will be doing so in violation of the rules?

A. He might have said that.

Q. Yes. You could have continued if you wanted to, couldn't you?

A. I couldn't answer that question.

The witness continued that: had he known that under the rules of the painters' union he should have received ten dollars and a half a day, he did not know whether he would have been satisfied to work for eight, "if that was the law" if he had known that under the rules of the union that he had joined, he should have received ten and a half a day on that job and work only five days a week, he would have wanted to work five days and get the ten and a half a day.

On *re-direct examination* the witness said he would like to get as much as he could; he had been with the Johns-Manville Company for many years and was tired of the factory work and one of his friends in the

painters' union said, "Why, if you are going to quit Manville, why don't you join the union?" and he said, "I will," and that is why he joined the union; the work at Johns-Manville was inside factory work and it was not a union plant; in that class of work the employees are not members of the union and he had remained a non-union man while he was doing that class of work for some twelve years; he wanted to get away from factory life and get work in the open; there was no necessity, but he wouldn't go around and undercut, wouldn't do it for anybody, himself or anybody else. The following then occurred:

Q. I am not talking about undercutting. You could have remained a non-union man and still not undercut, couldn't you?

A. Well, you might in some places, but I don't think you could do very much out there.

By THOMAS WINSOR: On *direct examination* that: He is a painter living in Somerville and had been a member of the local about a year and six months and a union man about two years and six months; he was one of the men who were employed by complainant on the hospital job and worked on it until about the 20th of February, when Hoffman took them off the job; Hoffman is their business agent although not a member of the local; he is a member of the carpenters' union and represents both the carpenters and the painters; Warren is State organizer for the painters; witness refrained from work after being taken off by Hoffman for about eight weeks and then went back to work when the injunction in this suit was granted at the same wage that had been paid before he quit and continued to work at the local rate.

On *cross-examination* the witness said that: He regularly attended the meetings of Local 734; that he did not hear any communication read from the District Council of Painters from the New Jersey Council of Painters, about the rule relating to the payment of higher wages; that he heard some talk among the "general run of fellows that are up there" about the Barker Company not living up to "ten dollars and fifty cents a day"; he did not know before the strike occurred that, according to the union rules, ten dollars and a half a day should be paid on the job; all he heard was they should get ten dollars and fifty cents a day; he does not know why they said it, the information come from Bound Brook; "some of the painters in Bound Brook had said that on that job the men who were working should get ten and a half a day"; he thinks they also said that they should work only five days a week; he did not know that that was one of the rules of the union; he had been working about two weeks before the strike was called; and the following then occurred:

Q. Well, I suppose if you had known that the rules of your union provided for ten and a half a day on that job you would have wanted it, wouldn't you?

Yes.

He continued that: Hoffman was on the job about three times before the strike; he finally told the witness that, according to the rules of the Brotherhood of Painters, Decorators and Paper Hangers he should get ten and a half a day and if the witness continued working he would be working in violation of the union rules; Hoffman did not threaten to fine or expel or do anything to him. The following then occurred:

Q. Then, when you knew that it was in violation of the rules, then you were satisfied to quit?

A. Yes.

Q. And you did quit?

A. Yes.

Q. Because you thought if you continued working you would be doing so in violation of your union rules?

A. Mr. Hoffman told us, yes.

Q. Yes. And that was what you——

A. Yes, yes.

On *re-direct examination* the witness testified that: He went back to work after the injunction of the Court because "I couldn't find anybody to tell me not to go back to work." The following then occurred:

Q. So, not finding anybody to tell you not to go back to work, you went to work?

A. Yes.

Q. And finding somebody to tell you to quit, you quit, originally?

A. Yes.

On *re-cross-examination* the following occurred:

Q. Did you know, do you know now, while you are working there, you are violating the rules of the union?

A. I don't know it.

Q. Do you still belong to the union?

A. I belong to the union, yes.

Q. Do you go to the meetings?

A. Yes.

Q. Do you expect to continue a member?

A. Do I expect to continue?

Q. Yes; do you expect to continue as a member of the organization?

A. Yes, yes.

Q. Would you expect to continue as a member of any other organization if you knew you were violating the rules of the organization?

A. I don't know that I am violating the rules of the organization.

Q. Well, you have been told, haven't you, that you are?

A. Before the injunction was served, yes.

Q. Yes; you have been told since then, too, haven't you?

A. No.

Q. Well, you don't want these men to get in contempt of Court, come down again and tell you that you are violating the rules, do you?

A. I don't want them to say anything, but I would like to get a little satisfaction.

Q. Well, you know, don't you——

MR. LANE: I do submit that this examination is coming pretty close to directions to this witness on the stand, who is still employed by us, almost in violation of your Honor's injunction.

MR. CARLESS: Well, if your Honor please, I am not going to be in contempt——

THE COURT: I think it is a line that is susceptible to two very different interpretations and I was just wondering myself what the slant was.

MR. CARLESS: Well, the witness says that the reason he didn't quit was because nobody came and told him to quit. Now, I am asking him whether he didn't know and doesn't know now that he is violating the rules of his organization.

Q. You say you don't?

A. From what I can find out, no.

Q. So you don't consider you are violating the rules of any organization——

A. No.

Q. —unless someone comes and tells you?

A. That is it.

The witness then testified that: When Hoffman came on the job, he did not tell the witness that he was

violating the rules; Hoffman said that there was no rule about it; he said they were out to get ten dollars and fifty cents a day.

By JOSEPH HOUSH, on *direct examination:* He lives at Somerville and is a painter and a member of Local No. 734, having been a member since April, 1924; before that he had not been a union man; he was employed by the complainant on the Somerset Hospital job and had worked about six weeks when, "I was taken off the job by the business agent"; the business agent's name was Hoffman; he went back to work after the injunction and at the time of the trial was still working on the job; and the wages that are being paid now are the local wages for Somerville; he had always been paid the local wage scale and worked half a day on Saturdays; the local practice is followed.

On *cross-examination,* the witness said: He attended practically all of the meetings of the union after he joined; he does not remember any communication being read at any meeting from the State Council of Painters, drawing attention to the rule relating to ten and a half dollars a day from the New York contractors; he does not remember any conversation at the union meetings about it; he does not remember hearing it discussed on the floor of the unions; the union did not pass a resolution just before this strike that the rule of the union should be enforced on that job; he sometimes stays at the meetings until all the business is through, sometimes not; when Hoffman came on the job he said: "I will have to pull the job; you fellows are entitled to ten dollars and fifty cents and you can't come back until it is settled and they pay ten dollars

and fifty cents a day"; the witness did not ask Hoffman any questions; Hoffman did not say that at the convention of the United Brotherhood or of the Brotherhood of Painters held in Dallas the constitution was amended containing that provision; Hoffman said that the payment of the local rate was against the rules of the union. The following then occurred:

Q. He did tell you that it was against the rules of the union. Now, then, when you say he pulled you off, or pulled the job——

A. That is what he says, have to pull the job; that is what he said.

Q. He didn't say, "If you men continue working after today, you will be violating the rules and you will be liable to fine or suspension"?

A. Yes, sir.

Q. He told you that, didn't he?

A. Yes, sir.

Q. So that he did say something else besides "I will pull the job." Now, tell us all that Hoffman explained to you when he was there that day.

A. Well, he come to the foreman. He says, "I will pull the job"; he says, "You fellows can work until 4.30," and that is——

Q. And that is all? Didn't say anything else?

A. Well, he said until they agree to pay ten-fifty a day.

Q. Didn't say anything else?

A. I don't know.

Q. I thought you said a minute ago that he said that it was against the rules of the union to work for less than ten and a half a day on that job?

A. That is what he said.

Q. Yes; and that was all he did say, wasn't it, that it was against the rules of the union to work for less than ten dollars and a half a day on this job and if you

continue working after today you will be doing it in violation of the rules; that is what he told you, isn't it?

A. Yes, sir.

MR. CARLESS: That is all.

RE-DIRECT EXAMINATION.

By MR. LANE:

Q. He told you to quit at 4.30 and not come back, didn't he?

A. Yes, sir.

RE-CROSS-EXAMINATION.

By MR. CARLESS:

Q. Well, now, which did he tell you? Did he tell you that you had to quit, or did he tell you that if you continued working you would do so in violation of the rules; which was it?

A. Well, the answer is the same, isn't it?

Q. What is that?

A. That is what he said; unless they pay ten and a half a day.

Q. What?

A. You couldn't come back to work.

Q. Yes, because if you did, you would be violating the rules; and he didn't say you have to quit; he didn't use that word "quit" at all, did he?

A. Well——

Q. Don't know whether he did or not.

By JOHN S. KELLEY, on *direct examination* as follows: that he is a master painter and has been such for twenty-five years; his work has extended over the states of Connecticut, New Jersey, New York and Pennsylvania; his home place in New York City; dur-

ing a period of twenty years he has been estimating on competitive work through these various states; he has come in contact with other master painters in competition; he has talked with the other master painters with respect to the way work was figured, and so forth; he is familiar with the way in which master painters compute all the calculations they use in figuring on competitive work.

On *cross-examination,* the witness said that he now has only a small contract outside the State of New York at Elizabeth, New Jersey, a building for the Central Railroad Company of New Jersey; he can recall no other job at the time outside of New York State.

On *direct examination* continued, the witness testified that he had been talking about the jobs he had at the present time; up to a year before he had had contracts in the various states he mentioned, running "five thousand, eight, $10,000; some more, some less." And thereupon the following occurred:

Q. And why is it that you haven't any jobs except these two that you refer to outside of New York?

A. I have refrained from figuring work——

Q. Why?

MR. CARLESS: Now, your Honor, I object to the question as to why he hasn't any jobs, or why he doesn't figure.

MR. LANE: Well, I am going to show he doesn't figure because the whole claim is the effect of this rule upon the foreign contractors, and I am going to show that this man, who is a foreign contractor, does not figure because of this rule.

THE COURT: If it can be linked up with that I will allow that line and allow an exception to the ruling.

Q. Why do you refrain from figuring now on work other than in your own home district?

MR. CARLESS: Exception, your Honor.

THE COURT: Yes, I asked that the exception be noted.

A. Why, I knew of this union rule compelling me to pay the New York rate to the local painters and I know that I am figuring against local bosses who would not have to pay the New York rate. I therefore think I would be wasting my time in making estimates.

Q. So that it is impossible for you to do it?

A. I think so.

The witness testified that he did not know of any practice on the part of master painters prior to the adoption of the union rule, in figuring on foreign work, basing their figures upon the wage scale local to the place from which they happened to come; the contractors always based their figures on the local scale where the work was performed; they could not get the work if they did not figure on the local wage scale; the industry is very competitive and has been highly competitive for twenty-five years; the industry is unionized on new work where there are trades other than the painters, practically 100 per cent. all over the United States except there may be one or two towns where there is a chance of an open job; it is the country generally; the entire building industry in New York, New Jersey, Connecticut and Pennsylvania is a 100 per cent. union; it is not practical for him as a contractor to do any painting work without the use of union labor; if he should try to do one job of painting with non-union labor, the union men would not work for him on any other job and if he did only one job with non-union labor and tried to do a new job, the other trades would quit; that has been a condition in the building industry well known to everybody in the trade for a long period of years.

On *cross-examination* the witness testified that on the job in Elizabeth he used two New York men, all who were employed; he figured on New York rates, because it was only a little thing; in addition to paying his men ten and a half and working them five days a week, he had to pay their carfare; the last job he had in New Jersey prior to the Central Railroad job may have been two years ago; he has not figured a job outside of New York State of over $10,000 during the past three years; the reason he did not was not because he could get plenty of work right in New York City and New York State; he runs his business himself; while complainant is three or four times as big as he is, his business is not in a different class of work; he is painting and decorating a bank in Coney Island at the present time; his concern is absolutely on a par with complainant as to kind of work performed; he is very friendly to complainant.

On *re-direct examination* the witness testified that the volume of his business last year was approximately two hundred thousand dollars.

By LOUIS HASS, on *direct examination* that he lives in Jersey City, New Jersey, and is a painting and decorating contractor and has been twenty years in the business under the name of J. I. Hass, Incorporated; that corporation is the J. I. Hass, Incorporated, which was the plaintiff in the suit in the United States District Court against a local of the painters' union in Connecticut; he had been performing painting work prior to the adoption of the challenged union rule in the States of Connecticut, New Jersey, New York, Pennsylvania, Massachusetts, and some other cities, but mostly Pennsylvania, New York,

Connecticut; he is familiar with the different wage scales that were existing and are still existing in the different territories; they vary in different districts; in New York the wage scale is ten fifty; in Jersey City ten fifty; in Connecticut they have different wages in different towns; they had from eight, nine—he does not know what they are now because he hasn't been up there since last fall; eight or nine, he thinks; in other parts of New Jersey there are different wage scales, he thinks from eight up; if he were figuring on a job in Washington, he would naturally figure the lower wages because he wouldn't be able to hire, bring men from New York to go to Washington and if he did not figure on the local wage scale, he would not get the work as against local competition; the painting industry is competitive; the attempted enforcement of the rule had an effect on his business because he hasn't gone out of town as much as he used to before because he could not compete with the local painters; whenever he went outside his own territory he had to do the best he could; he had a job only last fall in Hazleton, Pennsylvania; he was working there, almost completed, when the delegates came and stopped the job; they telegraphed for him; the effect of the rule has reduced his business almost $400,000 a year; last year he did about $650,000 of business; the painting industry in the states previously mentioned is 100 per cent. unionized; the other building trades he believes to be all union; it is not possible for him to do any painting work with non-union men because the other trades wouldn't work with them; he cannot work union in one territory and non-union in another "because you can't be union one place and be unfair in another place."

On *cross-examination* the witness testified wherever his work has been the trade has been 100 per cent. unionized; therefore he has always hired union

men and did not try to hire non-union men; he did not hire non-union men at the time of the strike and during the war they did the best they could; during the strike he hired men without knowing whether they were non-union or union, he didn't ask the question; he hired them to do the work; that was all he was interested in; he knows what would happen to him if he hired non-union men. "They would pull me all over the country"; when he had a strike they just struck in one place where he was doing business and he wasn't going all over at that time; at the time they had a strike in New York and he was working in Newark the other trades pulled his jobs all over; he is a painter, not a general contractor but knows that if anybody comes non-union on the job, all the trades go off in sympathy; if a non-union painter came on a job the other delegates would pull off the other trades; he has seen that happen several times; the last time was the week before he testified at Jersey City; there was a man started non-union and they took all the other trades off; he cannot tell the next one prior to that; he is employing union men. The following then occurred:

Q. As a matter of fact, you know it is very very seldom that any strikes occur insofar as the erection of buildings is concerned; it is very seldom, isn't it?

A. Well, I tell you, you must know more than I do, because you seem to be talking facts. You know more than I do about it because I told you—you asked me about non-union painters and I told you about it, but I can't tell you about strikes; I am no delegate. I can't pull the men off. All I can tell you is about myself.

The following then occurred: Plaintiff offered in evidence extracts from the Constitution of the International Brotherhood of Painters, Decorators and Paper Hangers of America, which was marked "Exhibit P-2."

Plaintiff then offered in evidence the rules of District Council No. 10, Brotherhood of Painters. The offer of this exhibit was objected to in the following language:

> Mr. Carless: Now, your Honor, I object to that. There is no District Council of Painters involved in this suit. In the other suit, one of the defendants was the District Council of Painters No. 10, which is located here in Essex County, but there is no District Council in Somerville. There is just that one local union that has members from Somerville and the surrounding townships. So that I object to that.

And thereupon the following occurred:

> Mr. Lane: Well, it is evidential, if your Honor please, under the charges of the bill, because we charge in the bill the way in which this association or organization is made up. The International Association itself is a party to this bill and the local is a party to the bill, and we say that the organization is made up in certain ways; to wit, by the International organization and the locals and the district councils, and that each of them has a constitution. Now, to show the structure of the union, it seems to me we are entitled to show the constitution of this District Council.
>
> The Court: But that is a council that isn't brought in, either in the line of its organization or through its personality, into this suit.
>
> Mr. Lane: No, it isn't a party to this suit.
>
> Mr. Carless: No, sir.
>
> Mr. Lane: Do you say that the Somerville——

THE COURT: The Somerville territory isn't concerned with the district council.

MR. LANE: Do you say that the Somerville local is not a member of this district council?

MR. CARLESS: No; it isn't affiliated with it in any way.

The rules were marked "Exhibit P-3," and thereupon the following occurred:

MR. LANE: Now, I offer in evidence a letter on the letter head of the Brotherhood of Painters, Decorators and Paper Hangers of America, dated December 5, 1921, Complainant's Exhibit No. 5 in the other suit, printed on page 177. That is a letter from the secretary of the Brotherhood which was sent out to all the master painters drawing attention to this rule. I suppose you will stipulate, Mr. Carless, that Mr. Rosenthal will swear that he received a copy of that letter. He did so swear in the other suit; I haven't asked him that question in this suit yet.

MR. CARLESS: Well, I suppose you can prove this letter anyway again and I might as well stipulate as to it. But this letter, your Honor, is dated December 5, 1921, which is more than three years ago.

THE COURT: That is the letter that was builded upon the Dallas Council?

MR. LANE: Yes, your Honor; that is the letter that was sent immediately after the adoption of this rule to all master painters, drawing their attention to this rule.

THE COURT: I suppose if that is the result, if that is the form letter that went out, why it is perfectly pertinent.

MR. CARLESS: It is the form letter.

MR. LANE: Yes, it went out, that there was such a rule in existence.

(The exhibit was marked "Exhibit P-4.")

And thereupon there was offered in evidence the challenged rule and admitted. It is a part of Exhibit P-2, being a part of Section 132 which reads as follows:

> "When a contractor, builder or boss painter does any work pertaining to our trade outside his home city or town—and in a locality where a District Council or a Local Union exists—not less than fifty (50) per cent. of the men in such district shall be employed on all work coming within the jurisdiction of the Brotherhood of Painters, Decorators and Paper Hangers of America as defined in the General Constitution."

By GEORGE W. HOFFMAN, a defendant herein, called on behalf of the plaintiff, on *direct examination;* he lives in Somerville, New Jersey, and is a business agent, representing the Somerville Building Trades Council which is composed of carpenters, plumbers, electricians, painters and laborers; it has a constitution and rules but he does not know where they are; the whole thing is that the by-laws have been exhausted, and they were made in 1913, and there have no new ones been issued since then; he believes he has a copy that is all marred with ink; but he hasn't got it with him; the Somerville Building Trades Council keeps a minute book and he believes the by-laws and constitution are in that minute book; the secretary of the Building Trades Council is William Fitz; Mr. Warren is state organizer of the painters and decorators; prior to whatever conversation he had with the men on the job of the Barker Painting Company at the Somerset

Hospital, he had discussed the matter with Mr. Warren; he looked up the constitution of the painters, the Brotherhood. The following then occurred:

Q. Mr. Warren knew what you were going to do?

A. I didn't do nothing.

Q. If you did anything did Mr. Warren know what you were going to do?

A. No, I don't think he would.

Q. How did he happen to come to Somerville?

A. That is more than I know, only that there were rumors around that the injunction was taken off and the painters should receive the New York wages there.

Q. Well, how did he—where does he live, do you know?

A. Warren?

Q. Yes?

A. I believe in Trenton.

Q. And he came up from Trenton to Somerville to see you?

A. Yes, sir.

Q. On this matter?

A. I believe it was that. He appeared before the Building Trades Council.

Q. And discussed this matter in the Building Trades Council?

A. Yes; and showed a decree of the court.

Q. That is the decree of the Court of Errors and Appeals—or the decision of the Court of Errors and Appeals?

A. The Chancery Court, it was; I believe it was the Chancery Court.

Q. The decree which permitted the painters to enforce the rule?

A. Yes.

Q. Yes. That was the decree of the Court of Errors and Appeals or the reversal of the Court of

Chancery; and he attended a meeting, do I understand, of the Building Trades Council?

A. Yes, sir.

Q. And brought to the attention of the Building Trades Council this fact?

A. To me personally; he was there, but he showed me the constitution and section of the law.

By ARTHUR J. ROSENTHAL, recalled testified on *direct examination* that the Barker Painting Company never agreed to comply with this union rule, so called, regarding the payment of the differential between the wage scale; the materials which are used by the Barker Painting Company in painting are purchased generally at the shop in New York and as the different jobs are done in different districts they are sent to the job from the shop in New York, although if a job is starting in the neighborhood they might be sent direct to the others; the large amount of material is purchased in New York and shipped; sundry things are frequently bought right on the job but the large amount is purchased in New York and then shipped to the local place where the work is being done; that is a practice which continues right down to the present time; Mr. Lemmer, who was the foreman on the job, is on his way to Los Angeles; he was taken sick with rheumatism which finally affected his heart and he was ordered out of the country immediately; he left a week before the witness testified, on a boat going through the canal, with his family; plaintiff had no opportunity to make any arrangements whatever with respect to taking his testimony; witness saw the man for a few minutes and he was in a bad condition, crippled.

On *cross-examination* the witness testified: the agreement that he had with the painters to employ only

members of the union, was an association agreement; he is a former president of the employing master painters association and is the vice-president of the employers' association of all trades; he is not an officer of the master painters at this time; the agreement that he refers to was an agreement between the employing painters association—and District Council No. 9; it was signed by the officers of the association for the association, representing all the members of the association; the last agreement expired on the thirty-first of December, past; it was made a year before, maybe a month before that; it was a one-year agreement; it is just being renewed now; they are working on it; at the time he entered into the contract with the Somerset Hospital, the agreement was in force; that agreement did not require him to live up to the rules of the unions; it is strictly an agreement with the council of painters, not with other trades; aside from wages and hours, it simply gives working rules between them in New York; it says nothing about the International constitution, or anything of that kind; they don't permit that to go in. The following then occurred:

Q. But according to the agreement that you have with District Council No. 9 in New York, that agreement provided that you must live up to the rules of the Brotherhood of Painters and Paper Hangers?

A. It did not.

Q. Sure of that?

A. Why, we wouldn't agree to live up to their rules; they don't even ask it.

Q. Don't ask it?

A. No.

Q. But you did live up to their rules when you were doing the Westinghouse job here?

A. No, not because it was their rules, because it was my custom.

Q. Because it was your custom, then, to work these men in Newark only the five days and pay them ten and a half a day, you did that——

A. Well, I will tell you something, Mr. Carless; since we have been working five days I like it, and if I had the chance to go back to five and a half I wouldn't do it. I like my Saturdays, myself.

Q. And on the Firemen's Insurance job, too, you did the same thing?

A. Yes. Oh, I do it on all my jobs. If they want their five days, they may have them; just so they don't ask the higher wages.

The following then occurred:

MR. CARLESS: If your Honor please, I don't want to be precluded from putting in some testimony in this case this morning upon my making a motion to dismiss the complaint, but I desire to move to dismiss the complaint at this time on the ground that the evidence so far does not show that the defendants in this proceeding have been guilty of any act that can be construed as an unlawful act; that they have acted within their legal rights, and in accordance with the decision of the Court of Errors and Appeals in this State in the case of New Jersey Painting Company against Local Union 26 of the Brotherhood of Painters, Decorators and Paper Hangers; the Court has decided that the rule is a legal rule, not violative of any legal right of the complainant. Under those circumstances, for the purpose of the record, I would ask your Honor to grant my motion to dismiss the complaint.

THE COURT: I will deny the motion, Mr. Carless.

MR. CARLESS: And grant me an exception.

THE COURT: Yes, sir.

DEFENDANTS' EVIDENCE.

And thereupon defendants to maintain the issues on their part joined, offered evidence as follows:

By GEORGE W. HOFFMAN, a defendant, on *direct examination:* he is a carpenter and the business agent representing the Somerville Building Trades Council; he is familiar with the work being done on the Somerset Hospital in Somerville by plaintiff; he did not at any time in January or February go to this job and order, in any language, the employees of the Barker Painting Company to quit work; he did not say to any of the employees, "You fellows can't continue here; you will have to let today be your last"; he did not say anything to either of the men that he was pulling the job; he showed them the clause in their constitution that they were violating and also a violation of their own rule which they passed at their local meeting a night previous to this time; he said it was their rule so they will have to stop work; they had decided at their meeting to stop work; they went to work that day because they couldn't get in touch with him, they were waiting all day and the foreman was taking it up with Rosenthal; witness has been connected with building trades council; he has been a union man for twenty-seven years, and been a delegate representing the carpenters for three or four years; not all of the trades are affiliated with the respective building trades councils; the bricklayers and masons, lathers and the sheet metal workers, tile setters do not belong to the Somerville Building Trades Council; as the business agent of the Building Trades Council, he has no power to pull a job or order men off a job; according to their laws, no man can quit work before he brings it up to the executive committee of the Somerville Building Trades

Council, if he does so, it is voluntary; the Building Trades Council of Somerville did not take any action whatever with regard to the Somerset Hospital job.

On *cross-examination* the witness testified he went down to the job at the hospital because it is his duty as a business agent; he is supposed to visit these jobs so that if there are any minor disputes to be settled to try and settle them and to see that the men have their dues paid and to see that the men are union men and if they don't belong to the union to try to get them to join the union; he had been going to this job two or three times a week regularly; he had the conversation with the men with respect to the rule because a State Organizer of the Painters, on February 10, Mr. Warren informed him that they were not living up to the constitution.

The witness then said:

A. On February 13, I went to the local meeting of 734, brought it up there, showed them the constitution; the men agreed to live up to the constitution. At that time, there was no men working at the Somerville Hospital—painters. On February 20, the foreman came out, drummed up his men, and I wasn't in town; they looked for me, and in the afternoon, oh, I should judge maybe two or three o'clock, they came to me and they said "What shall we do?" and I said, "What did you pass at your meeting?" Well, they said, "We worked until half-past four," and they were expecting Rosenthal to be out there. That is what the men told me. Then, at half-past four, they didn't go back to work after that.

The witness testified: Mr. Warren spoke to him before the meeting of the Somerville Building Trades Council; he came out to see the witness; witness had never met Mr. Warren before then; Mr. Warren showed the witness the constitution of the painters requiring

the higher rate of wage and also the decision of the Court of Errors and Appeals of New Jersey in the case of New Jersey Painting Company against the painters; the witness knew that the job was under way at the Somerset Hospital at the time; it had started in November and work had been done with local help, paying the local wage; the following then occurred:

Q. You knew that?

A. Yes, sir. I knew also that there was a court injunction that I couldn't insist on that higher rate.

Q. And that is the reason why you didn't insist?

A. Pardon me?

Q. And that is the reason why you didn't insist?

A. Well, after I was shown the appeal and the decision in favor of the Brotherhood, I knew then that it was the law.

Q. Yes, and was this matter taken up at the meeting of the Trades Council?

A. Just—I asked the privilege of Mr. Warren to address the Council on the floor so they would know the conditions.

The witness testified: the date of the meeting of the Trades Council was February 10; there was represented at the meeting painters, carpenters, plumbers, electricians and laborers; Mr. Warren was present and the matter was brought to the attention of the Council; Mr. Warren showed the decision of the court and addressed the Council and told the Council about this decision:

The following then occurred:

Q. Why did he address the Council about it?

A. Because that was the only place he knew he could find me and for courtesy sake.

Q. But if he had talked to you, why was he addressing the Council?

A. Well, that is a matter of extending courtesy to an organizer; we do that to all.

Q. But what interest had the other trades represented there in that Council, what had they to do with this painting matter?

A. Well, we like to hear the court decisions and of course it was in favor of the Brotherhood of Painters; we rejoiced in it.

Q. It is a part of your constitution, is it not, that the union men will not work where there are non-union men employed?

A. Well, that is up to the members themselves.

Q. It is part of your rules, isn't it?

A. I told you the last time we have no more rules. I never seen the rules, outside of an awful dirty, ink stained copy and nobody can read it.

Q. Well, you were going to produce one, you said you could get one; have you produced that here?

MR. CARLESS: He said he would try.

MR. LANE: Well, he said he would try.

A. No, sir, I haven't.

Q. Have you tried to find it?

A. Yes, I did try, and to be honest with you, I did have a copy and I forgot it this morning.

Q. Then there is such a copy in existence?

A. I found one, yes.

Q. Now, isn't there a provision in that constitution—have you read it recently?

A. Yes, last night. I left it home in the dining room, that is the honest truth.

Q. Isn't there a provision in that constitution that the union members, the members of the unions will not work with non-union employees?

A. I believe there is.

Q. Yes. And that applies to all the trades, doesn't it?

A. That is affiliated with the Council, yes.

Q. All the trades that are represented on that Council?

A. Yes.

Q. And the trades represented on that Council are whom, are what trades?

A. Laborers, carpenters, plumbers, painters and electricians.

By HERMAN LANDOW, on *direct examination:* he lives at 17 Rockland Terrace, Vailsburg Section, Newark, and has been a member of the Brotherhood of Painters, Decorators and Paper Hangers of America for twenty-three years; he is business representative of the painters, jurisdiction Council No. 10; Essex County, and was one of the defendants in the suit of the New Jersey Painting Company against the local union; he held various offices and has been business agent or business representative for the last eighteen years; he knows the Barker Painting Company during the last year has had work in the vicinity of Essex County; it is at present working on the Western Electric job in Kearny; it finished up the New Firemen's Building, on Park Place; he is familiar with the wages and hours of labor that were paid on those jobs; they paid the New York rate, ten-fifty per day; worked five days a week; that was because the rate of wages in New York was ten-fifty and the number of working days in New York five days; there is a rule in the national union relating to the payment of these higher wages which has been in effect to his knowledge, fifteen or sixteen years; it was in effect prior to the so-called Dallas convention that was held in 1923; he identifies a book as containing the general constitution of the Brotherhood amended January, 1920; section 62 was in effect in January, 1920, and a similar section had been in force in the constitution

of the Brotherhood of Painters for a number of years prior to that time. Thereupon section 62 was admitted in evidence as Exhibit D-1.

The witness then said: the delegates at the Dallas convention changed that law from 50 per cent. being employed in the localities they go into—they wanted to change that that the employer from an out of town district can go to another district and employ a 100 per cent. of their own men; that was done actually at the last day of the convention when the smaller locals had left the convention for their homes; practically New York and Chicago, being the big metropolitan cities, put it across; after the convention adjourned the action went to the membership and they protested and had a referendum vote throughout the country; the proposition was turned down by a general vote of the union and reverted back to the 50 per cent. law; the Dallas convention voted for the change but it was re-enacted by the referendum vote; and as a consequence the constitution of the international union was the same after the convention as before.

The following then occurred:

Q. Now, do you know, Mr. Landow, as to the reason advanced by your unions for the adoption of this rule regarding the higher scale and the shorter hours?

A. Well, the way I interpret it——

Q. No, what is the reason advanced by your organization for this——

A. Why, to stop dissension and turmoil on jobs.

Q. Now, how does this dissension and turmoil arise without this clause?

A. Why, when an employer comes into our jurisdiction with a higher rate, and we furnish men to him also, at the lower rate, why there is a turmoil there, because one mechanic is as good as the other and they feel as if that they ought to have the same wage on the one job.

Q. Well, what can you say as to the opportunity for the employer who comes out of town to get all local men to work on the job? Can he do that?

A. As a rule, the majority of the times no, he can't do it, because our own men that are steadily employed with the home employer would not go to work and leave their employer to go to work for an outside employer just temporary, to finish one operation.

Q. And when the out of town employer, such as the Barker Painting Company, the Jersey Painting Company, and other big concerns figure on jobs outside of their own home cities, what standard of wages and hours of labor do they use in making their bids?

A. In my connection with several of the employers they always claim they estimate on their home town work; that is, their home figures.

Q. On the rate of wages paid where their business is located?

A. Yes, sir. I will explain, if you wish, the reasons.

Q. All right.

A. I have spoken to several outside employers and the reasons were this: that they were never sure of getting men in the locality that they were going into, and for that reason they always had to figure on the higher rate of their home town.

THE COURT: Isn't the obligation upon the outside employer to employ at least fifty per cent. of the men in the place where the job is to be done?

MR. CARLESS: Yes, sir.

THE WITNESS: Yes, sir.

THE COURT: What is the outcome in case of the impossibility of securing local men to leave their steady employment, so-called?

THE WITNESS: May I answer?

THE COURT: Yes.

THE WITNESS: Why, we allow them to bring in their men.

THE COURT: In an emergency of that sort, the rule is elastic, is it?

THE WITNESS: It is not—it is elastic. I mean, in explanation, this, there are several times that an employer comes into our jurisdiction that they cannot get the fifty per cent. quota.

Q. And then in that case?

A. And in that case we allow them to bring their own men in, or wherever they can get them from.

On *cross-examination* the witness said he was present in court on the last day that the suit brought by the New Jersey Painting Company was tried; he knows Joseph F. Kelley, vice-president of the Brotherhood; he did not hear him testify.

Thereupon the following occurred:

Q. Well, now, I ask you whether what I shall read to you from his testimony will refresh your recollection. In the first place, he said that he was present at the Dallas, Texas, convention. You said you were not present.

A. I said what?

Q. You were not present at the Dallas, Texas, convention.

A. No, sir.

Q. He was, so he says. Now, he said, in answer to the question——

MR. CARLESS: What page?

MR. LANE: On page 111.

Q. With respect to the rule requiring the higher rate of wages to be paid: "Q. When was the amendment adopted, Mr. Kelley? A. The amendment, as in its present form, was adopted at our Dallas Convention. Q. Which was held when? A. In September, 1921." Now, does that refresh your recollection that the rule, the amendment was actually adopted at the Dallas convention in 1921, requiring the payment of the higher rate of wage?

A. That was prior to the Dallas convention.

Q. Well, was that rule, if in your constitution, enforced prior to the Dallas convention?

A. I will answer this way: there are several members belonging to the Brotherhood that do not understand its constitution but where they do understand its constitution they enforce the laws.

Q. Well, never mind whether they understand the constitution or not. As a matter of fact, don't you know that your constitution, if it did require the payment of the higher wage before the Dallas convention, was not enforced?

A. I answered that question, Mr. Lane, previous.

Q. Well, was it enforced or wasn't it? I didn't hear you.

A. In various sections, yes, where they understand the constitution.

Q. Well, in various sections, no?

A. That I can't answer.

Q. Was it enforced here?

A. Yes, sir.

Q. Absolutely?

A. Yes, sir.

. . . . . .

Q. Can you explain to me, if the amendment was in effect—have you any knowledge as to what old scale there was?

A. In what section do you refer to?

Q. In the metropolitan section.

A. I don't represent the metropolitan section so therefore I couldn't answer what their laws or wages were at the time.

Q. Then you are simply speaking for Newark?

A. I am speaking for Newark jurisdiction and the general constitution as a whole.

Q. Newark jurisdiction includes what?

A. Includes Essex County.

Q. What else, if any? Does it include anything else?

A. As far as I am personally concerned?

Q. Yes, you say you are speaking for the Newark jurisdiction; now what I want to know is what the geographical limits of the Newark jurisdiction are?

A. Why, all of Essex County.

Q. And that is all, doesn't go outside of Essex County?

A. As far as the wages and hours of Newark is concerned?

Q. No——

A. You are trying to get me——

THE COURT: No, he is not.

Q. I am not trying to do anything.

A. But I am trying to answer it as near right as possible. Now you are asking me a question; I am trying to answer it as near as I possibly can.

MR. CARLESS: All right, Mr. Landow.

Q. What is your jurisdiction, the geographical limits of your jurisdiction?

A. As an international or a local?

Q. No, as a local that you represent.

A. Why, it represents Newark.

Q. Yes.

A. Belleville, Arlington, Kearny, Irvington, and as far as the city line of Elizabeth.

THE COURT: Are there any parts of Essex County that it does not represent?

THE WITNESS: The District Council?

THE COURT: The local that you have just been speaking about.

THE WITNESS: Yes, sir, there is Orange; that has a local of their own; and Montclair has a local of their own; Elizabeth has a local of their own.

By MR. CARLESS:

Q. But you are the business representative of the District Council, aren't you?

A. Number ten; yes, sir.

Q. And that District Council has jurisdiction over all of Essex County, doesn't it; District Council No. 10 has jurisdiction over all of Essex County, over the whole of Essex County?

A. They have, but they have allowed Orange and Montclair to go out of the District Council and do their own business in that district.

By MR. LANE:

Q. If that rule was in effect prior to the Dallas convention, will you tell me why it was that the letter, which is in evidence in this case, was sent out by the secretary of the International Union to all contractors employing members of affiliated local unions of the Brotherhood of Painters, Decorators and Paper Hangers of America, reading as follows:

"I have been instructed by the New York District Council No. 9 to notify all our fair employers of the following amendments to our General Constitution passed at the last Convention held at Dallas, Texas.

"1. An amendment abolishing the fifty per cent. clause. This gives the employer the right to employ all his men in his home town to work on a job removed from the said home town, or the further right to employ the full quota of men required to carry on the work, from the membership of the local or locals in the city, town, &c. where the job is located.

"2. An amendment providing for the higher scale of wages to be paid to all men employed. In the event that an employer contracts work in a locality where the wage scale is higher than that prevailing in the jurisdiction of his home city or town, the higher wage scale must be paid to all men engaged by him, irrespective of whether they are employed in the locality where the work is being done, or in his home city, town, &c.

"The above-described amendments are in full force and effect. You are therefore kindly asked to be guided accordingly."

Now, your international secretary, on December 5, 1921, notified the contractors that an amendment had been passed by the Dallas, Texas, convention, providing for this higher wage; now you say it was in force and effect a long time ago.

MR. CARLESS: What page?

MR. LANE: 177.

Q. What is the explanation of that?

A. The only thing I can explain is this: When the secretary had sent out this notice and when there was an amendment placed before the convention and carried on the hundred per cent. clause and doing away with the fifty per cent. clause, why they had written it out that way.

Q. I only read that part of it in order to give you the context of the entire letter. What I am interested in is the second part of this letter, in which he draws

the attention of "fair contractors" to the fact that an amendment providing for this higher wage had been passed at the Dallas, Texas, convention. You say it wasn't passed at that convention; you say it was in the constitution, always in the constitution and enforced, and I am wondering why it was that your international secretary, if that is so——

MR. CARLESS: Well, he isn't the international secretary.

MR. LANE: Well, I beg your pardon.

Q. (Continuing.) —the secretary of the Council No. 9, why it was that he sent out this notice to the "fair contractors" notifying them of an amendment.

A. Well, that is true, Mr. Lane; you said the secretary, general secretary; this was Zausner, of the——

MR. CARLESS: No.

Q. No, it was McMurray.

A. That is right; McMurray was secretary, pardon me; McMurray sent that notice out after he got word from the Dallas convention that they had carried the hundred per cent. of membership going into another locality and he quoted the whole section. That don't say that the section of the International wasn't in prior to the Dallas convention, which these different by-laws shows. I knew that you were—if you had told me in the beginning New York, why, I could have answered it more intelligently.

THE COURT: Do you mean that the amendment that provided the feature of the hundred per cent. also included the language covering the matter of the higher wage?

THE WITNESS: Yes, sir.

THE COURT: That it was all one amendment?

THE WITNESS: They had it all in the last amendment of doing away with the 50 per cent., making it 100 per cent., in the Dallas convention, as I stated in my testimony prior. When a majority of all the small organizations had gone away, New York and Chicago combined and they passed this motion of a hundred per cent. in sending their home town into any other district.

THE COURT: The other feature is a part of the same section?

THE WITNESS: The 50 per cent. was a feature of the old law; the hundred per cent. was the Dallas law.

THE COURT: But was the feature regarding the higher wage a part of that same section?

THE WITNESS: Yes.

THE COURT: So that it was quoted by Mr. McMurray in its entirety?

THE WITNESS: Yes, sir.

THE COURT: But in reality, you say, the only new feature was the wages—the feature regarding the hundred per cent.?

THE WITNESS: That is all; the old feature was there with the fifty per cent.

MR. LANE: I don't think I will cross-examine very much upon that point. Counsel have stipulated that the testimony taken in the other case, so much of it as may be material and relevant in this case, may be read into the record, and I examined Mr. Kelley and I shall put in Mr. Kelley's testimony, Mr. Kelley having been present at the Dallas convention.

By HARRY S. WARREN, a defendant herein, on *direct examination,* he lives at 1117 South Broad Street, Trenton, and has lived in Trenton practically all his life; he has belonged to the Brotherhood of Painters, Decorators and Paper Hangers of America for close to fourteen years, he is general organizer of the International, and as such has been covering New York, Long Island, New Jersey, Pennsylvania; he is familiar with Section 132 of the present constitution of the International Union; that clause of the constitution has been a part of the International constitution of the Brotherhood of Painters and Paper Hangers since before he was a member; he was business agent for practically ten years before he was general organizer, and the clause was in force, the higher rate, and of course the day at his time was practically the same; Section 62 indicated by Exhibit D-1 has been in force all the fourteen years; at the Dallas convention, practically around the last day, when a number of the delegates from the larger cities had left at the convention, they attempted to eliminate the fifty-fifty clause in Section 62, leaving the higher rate; that would mean that the contractor, taking work in a city other than his home city, might have on the job one hundred per cent. of employees coming from his home city; a number of the locals in the different states got together and demanded a referendum vote; the constitution of the International provides that any matters of this kind may be submitted to a referendum vote; as a result of the referendum vote, the fifty-fifty clause was placed back in the constitution, or practically it wasn't taken out, but it was voted to stay in there, fifty-fifty, so that after the referendum vote, the constitution remained the same as it was before the Dallas convention; as an officer of the International Union, that before the Dallas convention the rule relating to the higher rate of wages was enforced; he

cannot say it was enforced everywhere, but in a majority of places it was enforced; in the performance of his duties, he comes in contact with employing painters; the following then occurred:

Q. And do you know as to when they figure on jobs in cities outside of their home city, what rate of wages and working hours they use in making their estimates?

A. I have had the employers to come and ask me what the rate was in the locality that they were figuring on, and they have asked by figuring the higher rate would they be able to get some men down there, and naturally I told them I couldn't guarantee them any men, and they would have the excuse that they couldn't really stand to take all their men from their home city, as they have enough work to keep them busy there.

Q. Well, then, what rate would they use in figuring?

A. The higher rate.

The witness then said: in the State of New Jersey there is a difference in the rates of wages paid to the members of the National Union. In Trenton the rate has been ten dollars a day, forty hours, since April 1, 1924; in New Brunswick, nine dollars; in Atlantic City, ten dollars at the present time, it was nine until April 1, 1925, he knows of contractors in Trenton who did work outside of Trenton, one being the J. E. Margerum Painting Company, which does a great deal of large work all over, practically, the state; whenever that company went into a locality where the wage rate was lower than in their home city, they paid the Trenton rate, the higher rate, and that is true of all the other employing painters in New Jersey, he has never heard tell of an employer in New Jersey going anywheres and paying a lower rate than what their own is.

The following then occurred:

Q. What is the reason advanced by your national union for having this apparent discrimination, difference in rates?

A. Why, we claim there ought to be but one rate on the job because if there is two rates or more it is sure to cause trouble, there is more or less jealousy between men, you know, and if one man gets more than the other that is going to cause some trouble if that is done.

The witness said that: in the performance of his duties he has an opportunity to acertain the make-up of the different building trades councils in the different sections of the country, and it is not true that all of the building trades are always in these Building Trades Councils; the bricklayers do not always belong; bricklayers and plasterers are not affiliated anywhere in Monmouth County, New Jersey; they have just recently in the last week or two, affiliated in Atlantic County; the carpenters are not affiliated in Atlantic County; in Essex County the carpenters are not affiliated; in Somerset County, there is a number of crafts out; he believes that there is only one Council in the State of New Jersey that has got a hundred per cent. that is, a hundred per cent. of the trades affiliated, and that is Mercer County, at the present time, his home county; some of the trades are tied up with an agreement that they could not give any support; there are some agreements between international unions and employers that in case of strikes on the part of members of other branches of the building trades that their members would continue working; the bricklayers, masons and plasters international union and carpenters international union are the only trades who have such agreements that he can recall; in case of a strike of any of the other branches of the industry, these branches of bricklayers, masons and plasters and car-

penters would not and could not go on strike; he believes the plumbers in Newark do not belong to the building trades council; the roofers were out but have just recently affiliated in Newark.

On *cross examination* the following occurred:

Q. If the trades do not have these agreements, what kind of support do you expect from them in case of trouble?

A. How was that?

(Question read.)

A. You mean the employers and the men?

Q. Yes.

A. To not to strike or——?

Q. I say if the agreements—if there are no agreements between a particular trade through its International Union with the employers and there is a strike in another trade a member of the Trades Council, what support do you expect?

A. Can't get any if their hands is tied.

Q. All right, if their hands are not tied, what support do you expect? That is what I am trying to get at.

A. Well, in case there is any trouble, we would expect to get support.

Q. And what kind of support, in what way?

A. Well, they try every way to get a job straightened out.

Q. Yes, they would do that even if they had the agreement, wouldn't they?

A. Yes.

Q. Well, now, I want to know something that you expect that they can't do because of their agreement.

A. Well, we don't expect nothing from them.

Q. If they don't have the agreement, what support do you expect is what I want to know.

A. They expect them to work strictly with union labor.

Q. Yes.

A. Union men.

Q. You expect them to sympathetically strike, don't you?

A. No, sir.

Q. Then what did you mean by that?

A. Sympathetic in general with the men.

Q. Would you expect them to strike if the employer in another trade brings in non-union men?

A. Well, I couldn't say; we don't expect them.

Q. Then what do you expect them to do?

A. Expect them to work strictly with union men.

Q. Then what does that mean when analyzed?

A. We can't say that we expect them to strike because some of them you can't get to strike.

Q. No. You expect them to work strictly with union men in the other trades, don't you?

A. Yes, we expect them to.

Q. And you expect them not to work with non-union men in the other trades?

A. Sometimes they go ahead and work.

Q. I am asking you what you expect, not what they do.

A. Expect them to work under the union conditions.

Q. Yes. In the other trades?

A. Yes.

Q. One trade supports the other?

A. Supposed to.

Q. Under the constitution of your District Councils, that is so, isn't it?

A. No; no, I wouldn't say that; the District Council has nothing to do with the other trades. The District Council consists of nothing but painters and paper hangers and glazers.

Q. Not the District Council, I beg your pardon; your Trades Council.

A. Yes, sir—no, not always; don't always say that. Every Council's or local's by-laws, or Building Trades Council's is different.

Q. Then where do you get the idea that they should refuse to work with other than union labor in the other trades?

A. The same as they do from the employers' association. The employers' association has a combination of supporting one another, and naturally the Building Trades Council is under the same idea, that when you are affiliated together, you support one another, but there is oftentimes you don't get the support.

Q. And as a matter of fact, these Building Trades Councils in a great many districts have agreements with the employers under which the employers in combination agree with the employees in combination that all the trades will work, that are in the combination, will work union men?

A. Yes.

. . . . . .

Q. Such an agreement exists between the employers' association of New York and the Trades Council in New York?

A. That is with a proviso; if union men can be furnished.

Q. I mean if union men can be furnished, yes, there is always that proviso.

A. Yes.

Q. Such an agreement exists between the Trades Council of New York and the employers in New York?

A. Well, I couldn't say for certain about that because that is a dual organization in New York and I don't know just which one that the associations are signed up with. Of course we recognize nothing but legitimate Building Trades Councils.

Q. Is there such an agreement between the employers of Newark, the Employers' Association of Newark, and the Trades Council of Newark, the Essex Trades Council?

A. I believe there is.

Q. And that includes all of the trades in the County of Essex with the exception of the bricklayers, plumbers and plasterers, does it not?

A. No, I wouldn't say that; I think the only one that is not in it is the carpenters and the plumbers; but in a majority of cases, the local signs up their own individual contractors. Take the bricklayers; they will sign up their own contractors; the painters will sign up their own employers; the building trades as a whole does not sign up in the City of Newark with the general contractors, not the Building Trades Council, but each branch signs up its own contractors.

Q. They are duplicate, uniform agreements, though, are they not?

A. No, sir, absolutely not.

Q. Well, at any rate, they all provide for the employment of union men upon the building?

A. Not upon any building, not specified in regards to any building in it.

Q. Well, they require that union men should be exclusively employed by the employer.

A. Yes, providing that the union can furnish him men.

Q. Yes. And that employer must work union, and the agreements also provide that the employer must work union men not only in the particular locality in which the work is being done but wherever he is doing work, don't they? It is personal to the contractor.

A. Yes, he is supposed to be fair; if he is fair in one place he must be fair in others.

Q. That is it exactly. The contractors, under the

union rules, cannot be fair in one place and unfair in another?

A. But a number of employers break that rule.

Q. I know it; and when they do break it and you are strong enough, you strike, don't you?

A. No.

Q. You don't?

A. No, sir; not always.

Q. You permit your rules to be violated with impunity?

A. Well, there is a lot of places so far away that when we find out about it that the employers get away with it.

Q. Well, I am always assuming,—if the employer doesn't get away with it and you are strong enough, you strike, don't you?

A. Well, if we find out about it in time, we don't strike but he will simply come along all right.

Q. And if he doesn't come along?

A. Well it is very seldom. I wouldn't say that there would be a strike, because very seldom we have a strike, unless it is asking for an increase, or something like that.

The witness then testified: he doesn't know of any job that was done by a New York contractor at local rates prior to the Dallas convention in this district; he does not know the building of the Memorial Hospital,—the painting of the Memorial Hospital, in Orange; he was not organizer at that time; he was business agent in Trenton at that time; he knows nothing about Metuchen, it was out of his district at that time.

The following then occurred:

Q. I am trying to find out how much you know about the rate of wages paid by New York contractors prior to the Dallas convention.

A. I know in my own district that ten years ago, when the Westinghouse was built in Trenton that Mr.

Haas, of Jersey City, paid the Jersey City rate, which was higher than the City of Trenton.

Q. Are there any other instances that you know of?

A. And all the trades work there was done by New York contractors paying the New York rate. It is true that there is lots of places that our membership at large doesn't understand the constitution and they get by with it, right at the present time. The same way in the case of Somerville. But in the majority of cities throughout, the New York,—the higher rate and shorter work days prevail.

Q. But there are instances, however, where you know that a New York contractor came over and paid less than the—or rather, paid the local rate?

A. No.

Q. Well, you have instanced——

A. I say I have heard tell of it but I couldn't swear to it.

Q. You have heard tell of it but you couldn't swear to it; but you have heard tell of Somerville?

A. Yes, sir.

Q. That is one.

A. That was one.

Q. Yes.

A. But that was misconstrued. I would like to say that during the injunction, restraining order, issued by the Jersey Painting Company, which was very broad, we notified practically—went out and told every organization throughout the State of this injunction against the Brotherhood, also Local 26, and the business agents of Newark, and after this thing was held along instead of going back and telling the position of the Court of Errors and Appeals, we broadcast it in our minutes of our State organization in June, which somehow or other wasn't read at the Somerville organization.

Q. I am wondering what effect the injunction had

to keep down this dissatisfaction that you said was created on the job by two rates of wages being paid, which was a reason for the adoption of this rule in the first instance.

A. Why, I could say that a majority of cases that the New York contractors brought their own men out with them.

Q. Well, they can't bring more than fifty per cent.

A. Oh, yes, yes; if our men refuse to go to work on the job, they can bring a hundred per cent.

Q. I see. And you think some of your men—and they brought their own men with them a hundred per cent., because your men refused to work?

A. Well, I don't say they all refused to work, but the employers in New Jersey today from New York,—they can't employ Jersey men under the fifty-fifty clause because they can't get them and they have to bring them from New York.

Q. Well, do you know of any instance where there was any dissatisfaction caused by the payment of two scales of wages on the same building?

A. Yes, just recently.

Q. Where?

A. On the Barker Painting Company of Asbury Park, last Saturday.

Q. Yes; what happened there?

A. A New York man received seventy-one dollars for his week's work, and the local men from around that jurisdiction, I don't say that they are Asbury Park members, but some they picked up around there, received forty-nine dollars, and there practically was a strike there among all the men, that jealousy.

Q. They are working, aren't they?

A. No, they quit.

Q. Isn't the job going forward?

A. I believe they are getting men from New York

now, paying the New York rate on to it with New York men only there.

Q. This man that got seventy-one dollars was a foreman, wasn't he?

A. I couldn't say that; it was a New York man; he started the noise, he started the trouble down there; he showed them his money, what he got.

Q. Was that the reason why they quit, or did they quit because the Barker Painting Company was violating this rule down there?

A. Oh, no; no.

Q. What?

A. No.

Q. They had been working up to the—when did they start to work there?

A. Oh, since the injunction was on.

Q. Yes; and they had been working there peacefully up to within the last week, hadn't they

A. Well, I couldn't say it was peacefully.

Q. Well, they were working there peacefully up to the hearing in this court.

A. No, they just—practically the job hasn't been started over three weeks, I don't think, three or four weeks at the most, and of course the job is just getting along where they can use some men, I believe, at the present time. It is a hurry up job. Practically I haven't been on the job at all myself, and they have been trying to get men; I know they have been advertising for men.

Q. I didn't get that last.

A. I know they have been advertising for men.

On *re-direct examination* the following occurred:

Q. With regard to the agreements signed as you said between employers and the different unions, I understood you to say that they provided for the employment of union men.

A. Yes.

Q. Union help?

A. Yes.

Q. Do you know as to whether or not these agreements, assuming it was an agreement with the carpenters and the employers, whether those agreements provide that the employer shall employ all union help, or whether they merely provide that they shall employ union carpenters?

A. Union carpenters, that is all.

Q. In other words, the one member of the Building Trades Council entering into an agreement with the employer, looks after the men of that particular craft.

A. That is all.

Q. And doesn't concern himself——

A. No.

Q. ——about the others.

A. No.

On *re-cross examination* the following occurred:

Q. Well, will you say that union painters will work with non-union carpenters?

A. I wouldn't say they would or I wouldn't say they wouldn't.

Q. Well, don't you know they wouldn't? You have been the State organizer of this painting union for how many years?

A. A little over two years.

Q. And you have been a union man for how many years?

A. About fourteen years.

Q. And do you mean to say now that you don't know whether union painters will work with non-union carpenters or not in a union district?

. . . . . .

A. Well, I should say in a union district they would work with union carpenters; carpenters would work with union painters.

Q. And they would not work with non-union carpenters——

A. I have seen it.

Q. Yes, you have seen it; I am talking about the general rule now.

A. No, they should not.

Q. It is the backbone of the unions, isn't it?

A. What is that?

Q. The fact that they will not work with non-union men if they can possibly avoid it, put it that way?

A. If it was the backbone, Mr. Lane, we wouldn't need organizers or business agents.

Q. Well, it is what you are attempting to make the backbone then?

A. Yes.

Q. Put it that way, is that right?

A. That is right.

PLAINTIFF'S EVIDENCE (Continued).

Thereupon the defendants rested and to further support its case plaintiff offered in evidence the record in the case of New Jersey Painting Company vs. Local No. 26 in the Court of Chancery of New Jersey of the testimony of MR. ROBERT E. MACKAY commencing on page 64, from page 64 to page 66, and by stipulation the following statement was taken as a resume of that testimony:

> "Mr. Robert E. Mackay is the president of the New Jersey Painting Company, and also the president of the Robert E. Mackay, Inc., Robert E. Mackay, Inc., is a corporation of New York, which has been in the business of doing painting in New York and over the United States since 1905."

From the same testimony of Mr. Mackay the following was admitted without objection: he was presi-

dent and executive manager of New Jersey Painting Company and Robert E. Mackay, Inc.; both concerns have done business in different parts of the country; from Denver to New Orleans and all through the South and North; up to the adoption of the rule at Dallas, Texas, he did not know of any practice among painters in paying the local rate or foreign rate, whichever might be the higher; he did the Memorial—extension of the Memorial Hospital in Orange a short time before and he only paid the local rates; the condition of the painting business is keenly competitive and has always been that way; master painters, with respect to the rate they figure in getting contracts, can figure any rate they want, but, as an example, if a building is to be erected in Tacoma, Indiana, the George J. Fuller Company, a general contractor, will get figures from the local painters and, irrespective of what the figure of the master painter is, if Fuller Company want the master painter to do the job, it will offer him that work at the local price, and if he does not take it, he does not get it; the local price prevails, because that is how they get their general contract and they have got to hand it down the line to their sub-contractors; he is speaking of the local contract price, and that is based on the local rate as to labor in the town in which the work is to be erected.

Without objection the further testimony of Robert E. Mackay on *cross-examination* was admitted:

Q. Then you say in the month of October, 1921, you were informed by District Council of the Brotherhood of New York City that a new rule as to the application of higher wage had gone into effect?

A. They notified us that any New York concern going into a foreign territory would have to pay the higher rate of wage—in other words, they would have to pay the New York rate, but that the fifty-fifty propo-

sition had been cut out—done away with—that we could use all New York men or all local men.

Q. But the application of the higher wage, you were informed that that rule had been adopted some time prior to October, 1921, is that correct?

A. No, no.

Q. Well, you were informed in October, 1921, that the rule had been adopted?

A. At the convention held at Dallas, Texas.

Q. At about that time?

A. About—I think it was in October they held it.

By consent the entire examination of JOSEPH F. KELLEY, who was sworn for the defendant in New Jersey Painting Company as Local No. 26, including the direct and cross-examination, was admitted.

The witness said on *direct examination* that: he resides at Laurel Springs, New Jersey; he is a painter by trade; at the present time he is International officer, second general vice-president of the Brotherhood of Painters, Decorators and Paperhangers of America, one of the defendants in the action; he had been a member of the organization for eighteen years, and second general vice-president for thirteen years continuously, and by virtue of his office he is also a member of the general executive board of the Brotherhood, and has been such for thirteen years; his duties as member of the general executive board of the Brotherhood is to act as a director of the International organization which is chartered under the laws of the State of Indiana, and the general executive board passes upon grievances and disputes between members of the organization and between various locals and district councils, also adjust disputes or differences between the local organization and employers; he has attended mostly every

session of the executive board, which meets four times a year, and takes up the disputes between the men and the employers and various appeals and grievances that come up under the constitution of the Brotherhood; he has assigned to him numerous duties; he has a district where he has charge of all disputes between the members and the various local unions and the local unions and their employers; he is sometimes called on to adjust disputes with employers; sometimes arrange and make—carry out agreements with employers, and the different disputes that arise from time to time brought on by the membership in the various cities where local unions of the Brotherhood are located; in such district assigned to him he is the representative of the Brotherhood of Painters, Decorators & Paperhangers of America; his district at the present time takes in from Virginia to New York; that is, in other words, it takes in including the State of Virginia, West Virginia, the District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, New York and part of the Ohio Valley; he has been in charge of that district as representative of the Brotherhood ever since his encumbrance in office thirteen years ago; he had other districts at one time; his district one time also included the whole of the New England States, comprising Connecticut, Massachusetts, Maine, New Hampshire, Vermont and Rhode Island, but in recent years he has not covered it, because they have a man now, vice-president of the Brotherhood, who takes charge of that territory; he covered the entire territory in 1910 and 1911; he has attended every assembly that was held since 1905 of the Brotherhood up to the present time, and participated in the deliberations and resolutions of such assemblies as a delegate and as a vice-president; his experience as a member of the general executive board of the Brotherhood and its first vice-president, as a repre-

sentative of the brotherhood of the territory mentioned, and as a delegate of the general assembly has given him a complete familiarity with the organization and its condition and with the condition of the painting industry in the country, and with the relations of employers and workers in the different parts of the country, and with the general working conditions of the industry; the Brotherhood has approximately about a hundred thousand men divided into possibly 1250 local unions scattered through the United States and Canada, and Honolulu and Porto Rico; in the painting industry they distinguish between local concerns and national concerns; a local concern is one which confines its activities and work to a certain locality, for instance,

> "we would take a man in a small town—his work would be mostly confined to that city and its suburbs, but a contractor that we would consider nationally would be a man that would do work throughout the entire country, sometimes from coast to coast, and they would—they generally come from the very large cities";

he thinks if they have fifty national concerns that would be a great number; they would come principally from New York, Chicago, Boston, and a few isolated places —Cleveland, St. Louis, and here and there might be an employer of what would be considered national reputation that would go throughout the country, periodically.

Q. What percentage of all national concerns would you estimate to be comprised in New York, Chicago and Boston?

A. The question is, what I would consider of national reputation in those three cities?

Q. Yes, as compared with what is outside of these three cities?

A. Well, I would say that the bulk of the national men would come from those three cities.

Q. Can you make it somewhere more definite than saying the bulk? Would you say fifty per cent?

MR. LANE: I object to that.

Q. My question is, can you make your statement more definite than merely designating it as the bulk?

A. Well, I would say that over twenty-five per cent., I would venture to say, come from the three last cities.

Q. Over how many?

A. Twenty-five per cent.

Q. You mean twenty-five per cent. of the national concerns?

A. No. I would say—pardon me. You get me wrong. I would say that there would be about twenty-five of those would come from the cities of Chicago, Boston and New York.

Q. You mean twenty-five out of the possible fifty?

A. Yes, sir.

Q. And with respect to the volume of work done by such concerns outside of their home city what portion of it would you estimate as being done by the concerns of New York, Chicago and Boston?

A. What percentage of the work that they would do outside of the city where they are located?

Q. Perhaps the question is not quite clear, Mr. Kelley, I mean if you take the entire volume of work done by national concerns outside of the home cities what portion of that work is being done by such concerns coming from New York, Chicago and Boston?

A. In the whole country?

Q. Yes.

A. Well, of course, I would have to figure that. It is quite a proposition. It needs some thought on it to figure what percentage of the work they would do outside of their home city. I will answer it this way and

say that some contractors do a great deal more outside of their home cities than they do in.

Q. That is not my question, Mr. Kelley. I did not want you to compare the work done by such concerns outside of their home city with the work done by them in their home city, but what I wanted was, if you take the total outside work done by such national contractors or concerns how much of it would fall to the lot of New York, Chicago and Boston and how much of it would be done by other concerns such as you have mentioned in Cleveland or St. Louis?

A. Well, I figure that New York, Chicago and Boston concerns, on classes of work, they would do about twenty-five per cent. of it.

Q. And the other seventy-five per cent. by the St. Louis and Cleveland concerns?

A. Yes, sir.

Q. Do you get me?

A. And the local contractors.

Q. And the local contractors?

A. Yes, sir.

Q. Then you did not get my question. I am not considering local contractors. I am considering only the outside work done by these national concerns whom you described—only outside work—and I am asking you with respect to such outside work what portion approximately is being done by concerns in New York, Chicago and Boston, and what portion is done by the remaining concerns such as you mentioned, Cleveland and St. Louis?

A. Oh, well, I should say that those firms out of those large cities, where the work is on the outside, that they have the contract for, of at least seventy-five per cent. of the work. That is—now you get my answer on that—is where they go out from these cities, understand, and those of national character.

Q. Yes, sir.

A. See?

Q. Would you name the principal national concerns outside of New York, Chicago and Boston?

A. That is in those isolated places where I mentioned?

Q. Yes.

A. Well, we have one in Cleveland, we have another in St. Louis, we have another in Louisville—those are three of the principal ones outside of the cities that I mentioned.

Q. And do you think of any more outside of these three?

A. Well, we have one here in Jersey that does considerable work, I would place him in the national proposition.

Q. Who is that?

A. The firm of J. I. Hass of Jersey City. He is quite a large employer of men, and goes throughout this immediate vicinity, around these states.

Q. And can you think of any more outside of the concerns you have mentioned?

A. Oh, well, I would have to give time to that. There might be one in the City of Washington that goes around that town, but not of any importance. Just simply has considerable work between the District of Columbia and Baltimore and work around Maryland; and might be one in Pittsburgh that covers considerable work in the vicinity of Pittsburgh and the adjacent towns within fifty or a hundred miles, considered quite an employer of men, but not of national scope.

Q. And all the other concerns doing work on the national scale are centered in these cities you have mentioned?

MR. LANE: I object. It is a misconstruction of the witness' testimony. I object to the question in that form.

A. The answer to that is, that the majority of work is done by the employers I have mentioned.

Q. Mr. Kelley, what type or class of work is being done principally by these national concerns outside of their own home city?

A. Well, of course, I would divide it in two classes and say there is a class of employers out of the large cities that does a lot of decorations, such as churches, theatres, private residences and banks and lodge rooms; that is decorative work—and the other is class of work that might be termed commercial work, as in loft buildings, office buildings, manufacturing plants, and housing propositions, sometimes that large corporations have developed for housing their employees in a certain locality. That is what I would say that the work is divided up in.

Q. According to you then there are two classes of work for which these national concerns may be engaged outside of their own home city, one is work requiring more than average skill—decorative work?

A. Yes, sir.

Q. And the other large sized operations?

A. Yes, sir; large buildings; skyscrapers as we may term them and banks and corporations.

Q. In your experience are these national concerns ever called upon to do ordinary work of small size outside of their own home city?

A. Well, not often. Some of them do that in their home cities, what we call old work or alteration work, and in some cases they have renovations—renovate homes.

Q. In their own cities?

MR. LANE: I object.

A. In their own cities and out of town.

Q. And what class of contractors does the ordinary work distinguished neither by quality nor size in the smaller towns—who does that work ordinarily?

A. Distinguished by quality?

Q. Not distinguished either by quality or by size, just ordinary plain work in the smaller towns?

A. In the smaller towns they have small contractors that does small jobs, like alterations or perhaps new houses. Things like that generally goes to the local contractors. In the very small towns—of course in some towns they have got some fairly good size contractors. In towns of a hundred thousand or more they have got fairly good sized contractors in those towns and they generally do the bulk of the work in those cities.

Q. In the course of your negotiations with employers or efforts to adjust the dispute between employers and workers have you had occasion to learn what charges the national concerns make for work done by them outside of their city?

MR. LANE: I object upon the ground that it calls for a conclusion. It calls for information which cannot be within the knowledge of the witness except by hearsay, and something too indefinite and not the best evidence.

Q. Have you had occasion to familiarize yourself?

A. I don't know whether the object stops me from answering.

Q. Go ahead.

A. Well, I think that I could answer that. These men of national character, why, of course——

Q. Your first question, Mr. Kelley, is whether you have had opportunity to familiarize yourself with the prices charged?

A. Well, in a number of cases I have had by hearing the price of work and different things like that.

Q. From whom?

A. From contractors and from our men.

Q. From both employers and workers?

A. And our men. They have general knowledge that we have of work of that description.

Q. Will you state whether as a rule such national concerns charge more or less for work done outside of their home cities than for work done in their home city?

MR. LANE: Same objection, and on the further ground that it is wholly immaterial.

A. Invariably I would say that they charge more. I might explain that my reasons for that is that in mostly all instances they have to send their charge men and in a number of cases they have to send their material, their scaffolding and their appliances, and the men that they send generally have to get their board and their expenses, and that is where my knowledge would come in of those contracts being charged at a greater sum.

Q. Than for similar work done in the home cities of these contractors?

A. Yes, sir.

Q. Mr. Kelley, is the wage scale of the journeyman painter uniform throughout the country?

A. No.

Q. Does it vary?

A. It varies, yes, sir.

Q. In the various localities?

A. Yes, sir. The local organizations are permitted to make ther own wage scale.

Q. How much of a variance is there between the lowest and highest wage scale in your industry?

A. Well, I might say that those towns that are not organized and those that are only partially organized, why they have a low wage scale, and in the large cities, why the wage scale is generally fair and considerably higher than those localities where they have no semblance of organization.

Q. And the wage scale in each locality is fixed by agreements between employers and workers?

A. In mostly every case. Sometimes by co-operation—or an agreement with the employers and with the journeymen, and sometimes where there is no employers' association it is generally set by the journeymen and the employers go along with it.

Q. The employers accept it?

A. Yes, sir.

MR. LANE: He says, "go along with it."

Q. By "go along," Mr. Kelley, do you mean they accept it?

A. Yes, they accept it.

MR. LANE: Or yield to it.

THE WITNESS: Well, I might state in that case that in the smaller towns the employers are most all members of our organization, in those cases that I refer to.

Q. Mr. Kelley, Mr. Rosenthal has testified—(interrupted.)

MR. LANE: I object. That is not the proper way to put the question to the witness.

Q. Mr. Kelley, in the examination of Mr. Rosenthal as a witness in this case, the following question was asked of him and the following answer made by him. "Q. Do you know or did you know or do you know of any practice of contractors in the City of New York in estimating upon work in other cities figuring on the New York wage scale? A. No, sir; figure the local rates. Q. What wage scale is figured on? A. The wage scale at the point where the building is being erected." I will ask you whether this is the practice in the industry in your experience.

MR. LANE: The same objection.

A. I would say—as far as my knowledge is concerned I would say no.

Q. And on what basis within your experience does a New York national contractor within your definition figure for work to be done outside of New York?

MR. LANE: I object on the ground that the witness has not shown any experience to qualify him to answer.

A. Well, that question, I might answer it in this way, that in a great number of instances these national painting contractors generally furnish estimates to national builders, or builders of national reputation that come principally from the large cities, and their general system is to send—like if the general contractor was located in New York they perhaps would send out invitations or bids to maybe seven or eight contractors in the City of New York that are competent to bid on this class of work and in other instances they might send out outside and get perhaps one—one sometimes might be from the city where the job is located, or might be some other city in the country—that they perhaps would receive five or six bids from New York contractors and then perhaps they would take a bid of a local contractor or some other man coming from some other city, and sometimes that man would perhaps be one of those that would be, as I said, isolated, that does work throughout the country in different towns—(interrupted).

Q. My question, Mr. Kelley—(interrupted).

MR. LANE: I object to the interruption, let him finish.

Q. My question, Mr. Kelley, was whether in making such estimates the New York contractors bidding on an outside job figures on the New York scale or on

the local scale—of the locality in which the job is being done?

MR. LANE: I object to that question being repeated. The question was put before and the witness started—was saying he would answer it in this way, whereby counsel, not satisfied with his answer, interrupted.

Q. Have you my question?

A. Yes, sir. I would say that they estimate invariably on the home city work. They would take their basis for their estimate on their home city.

Q. Applying that to the case of the New York contractor taking work outside of New York the scale he would figure on would be which?

A. New York scale.

Q. With respect to the class of work which you designate as decorative work would the national concerns mentioned by you meet any competition in the local market?

A. Well, they might in some instances, and others why it would be nil.

Q. In the case where a particularly decorative painting job is to be done, say a church or theatre, in a smaller town, does such town as a rule have workers of sufficient qualifications to do the work?

A. No.

Q. It was also testified to on this trial that one of the reasons why national concerns, as you just defined them, were apt to get work outside of their own city was because they could underbid local contractors and do the work for less money. Is that the case within your experience?

A. Not in my experience.

Q. Will you state what in your experience are the principal inducements for general contractors to en-

gage national concerns to do work outside of their home cities?

A. Well, there are numerous reasons. Some of them—first, because of the organization that some of these national painting contractors have; another on account of the efficiency of the men, and another on account of their ability as skilled mechanics and in order that they will be able to turn out their building at a certain time which general contractors have to do in a number of instances, and they have and can have more harmony with the men employed on this kind of work on account of the organization that some of these large contractors have in handling this class of work.

Q. Are the most skilled and best qualified journeymen painters or decorators scattered evenly throughout the country or are they to be found in some particular center?

A. I would say they are to be found in large centers—in large cities.

Q. As for instance?

A. For instance in New York, Chicago, Boston, Cleveland, and on the coast I would say in Los Angeles and San Francisco. The cause of that is because of the volume of work of that character that requires the skill would be greater and the opportunity for them to make a livelihood would be greater in those cities, and the bulk of the skilled mechanics come from the larger cities.

Q. Mr. Kelley, prior to the convention of your Brotherhood held at Dallas, in September, 1921, was there any uniform rule within your Brotherhood regulating the wages of your men on outside jobs done by what you term national contractors?

A. There was a rule, but there wasn't anything definite at that time regarding the enforcement of any definite rule regarding wages.

Q. Was there any uniform practice with respect to such jobs as bearing upon the wages to be paid?

A. Well, there was a practice that had existed for years. I might say that in my opinion was the cause of this higher rate being enacted into a law in our constitution. The prevailing practice for years was that where an employer coming from a large city to do a job he offered—often made extra inducements to pay more than the scale, and that is done for various reasons. They would offer five—ten or perhaps pay the higher scale of wages of the city that they came from in a number of cases, and that went on for years prior to the enactment of that law and that was done again, in my opinion, for efficiency, and for the men—they wanted competent mechanics in order to finish the job —had to make some extra inducements in some places to take them from the local employers, or get men—men do not care about quitting their local men without there is some opportunity—and that was invariably the case for years. Men seek those jobs in the town where they pay the extra money.

Q. You have said, Mr. Kelley, that was the cause for the adoption of the rule by your convention, was that the only cause?

A. Well, not—that was not the only cause, but in my opinion that was one of the causes. There was a number of reasons that the membership had to give for that. That was one of them; and again our membership believed and to this day believes that these contracts are always estimated at the higher rate of wages, and they believe that they would get some of that work; and again on account of the friction and lack of harmony that would exist on a job there were two different and distinct wage scales paid. Didn't mean harmony. Didn't mean for organization; and again meant, by paying one wage; and the higher rate —it meant a just and equitable wage and those are the

reasons the men give from time to time for getting up this law.

Q. When you say this law, Mr. Kelley, you mean what law?

A. I mean the section of our constitution that says that higher rate of wages of either city shall be paid.

Q. Mr. Kelley, in undertaking an outside job, is it customary for the contractor to take some of his employees in his home city to such outside jobs?

A. Mostly every case, yes, sir.

Q. And prior to the enactment of the present constitutional provision of your Brotherhood what wages would the man so taken to the outside job be paid?

A. He would get the higher rate of wages. If he was leaving his home city and it was higher he would get that, and if it was going to a city where it was higher he would have to receive the higher rates of wages there.

Q. In a case where the job was undertaken by a national concern in New York to be executed say somewhere in New Jersey and some of the New York employees would be sent to said job, they would get the New York rate?

A. Yes, sir.

Q. And in such cases would the men coming from New York frequently work with local men on the same job?

A. Yes, sir.

Q. And prior to the enactment of this rule what wages would the local men get?

A. Well, as I said before, in a number of instances the employer coming in would offer them some inducements to work for, as I said, five or ten cents an hour more or make some extra inducements to them. In a few instances they might have worked for local conditions.

Q. Within your experiences as member of the general executive board and as the representative of the Brotherhood within your respective territory, did any friction ever come to your notice on account of the diversity of wages paid on the same job to men coming from one city or from the other?

A. Yes, sir.

Q. Or any disputes between workers and employers on that ground?

A. Yes, sir.

Q. Do you know of any strike having been called by such conditions?

A. I cannot just figure where—just now where there was any strike directly, but we have had lots of friction and it would lead us to strike if we were not to adjust them to the satisfaction of our men and the employer.

Q. Have you had many occasions to adjust such disputes?

A. Yes, sir.

Q. Arising out of the diversity of wages paid on such jobs?

A. Yes, sir; I have had some. I had one that I have in mind since the enactment of this law, in the City of Washington. We had a New York employer who was employing all of New York men and was not employing any local men. There was friction between those men and our men located—or belonging to our local union there, and they called attention to our laws relative to this matter, and I went on the job and saw the man in charge and he told me that the owner of this house did not want any local painters to work on this job. I said, "Well, that is peculiar," and he said that he wasn't going to put any Washington men on, and he wasn't going to pay any men, if he was forced to employ them, the wages. Of course, I assumed he was taking some authority and I came on to New York and

talked to the employer, and he told me that, "We know the law, Mr. Kelley, and we have always been friendly with your organization. We want to be and you can rest assured you need not bother any further. We will comply with your law and the men of Washington will be employed and we will pay them the New York rate of wages."

Q. That relates to the other branch of your rule, the proposition of employing at least fifty per cent. of the local men?

A. Yes, sir. And also the higher wage scale.

Q. And the higher wage. Now, I am asking you whether you ever, or your organization ever had complaints from employers on account of friction among the men due to the different wage scale paid on the same job?

A. Yes, sir. We have had. Quite recently. An employer from Louisville, Kentucky, complained about our men in Chattanooga, Tennessee, demanding the higher rate of wages, and I believe we had to send one of our organizers there to attempt to adjust the matter.

Q. Was that after the enactment of this rule?

A. That is less than a month ago.

Q. Now, Mr. Kelley, I am referring to the period before the enactment of the present rule and I am asking you while there was no uniform rule for the payment of the uniform wages to all men on the same job, did the employers ever complain of being hampered in their work by friction among the workmen?

A. Well, indirectly. We had cases at that time where we had to go and tell the people that our men—in those cities that they would have to work for the prevailing rate of wages of their home city.

Q. Did any interruptions in the work on account of such friction or disputes come to your notice before the enactment of the present rule?

A. Yes, sir. Men in those cities would not work on the job.

Q. Were you present at the convention of your organization at Dallas when this amendment to your constitution establishing a uniform rate of wages on outside jobs done partly by men from one locality and partly by men from another locality was discussed?

MR. LANE: I object on the ground that it is not a true statement of the rule.

A. I was present at the time when this matter was discussed by the delegates to our assembly.

Q. I refer to the rule which establishes the uniform wage and fixes it at the higher of the rate in the home cities, or in the locality of the work, as the case may be?

A. I was present when that was changed, or made more explicit.

Q. And did you hear the discussion on the subject?

A. Yes, sir.

Q. And were the grounds mentioned by you considered?

A. Yes, sir; some of the things that I advanced were advanced on the floor of the assembly. One in particular was the fact that in a number of instances the higher rate was estimated on and for that reason the delegates that were advocating the higher rate advanced that as their reason for this change in our constitution.

Q. Will you please summarize the reasons urged for the adoption of that amendment?

A. I did not get that question.

Q. I say, will you summarize briefly—state briefly the reasons which were advanced for the adoption of this amendment at your convention?

A. I thought I explained those early in the affair. Of course, I said that the reasons advanced were on

account of the members knowing and believing that all this work was estimated at the higher rate, and again for to keep down the friction that would exist where there were two scales of wages.

Q. On the same job?

A. On the same job, and by the same employer, which isn't—doesn't mean very much organization. So—and in order that the job would go along smoothly and efficiently because where there was friction it generally follows that the employer is not getting what belongs to him, so far as that is concerned, and in order that there should be a just and equitable wage, because in a number of instances the men were working alongside of men and doing, in instances, the same class of work, and they believed that they were justified in their contention of getting as much money as their fellow brothers coming from the other cities. All of those were things that were discussed.

Q. When was the amendment adopted, Mr. Kelley?

A. The amendment, as in its present form, was adopted at our Dallas convention.

Q. Which was held when?

A. In September, 1921.

Q. And after the adoption of that amendment was notice of it given to the employers?

A. I believe that the delegates after they left the convention notified their employers, and where there is a District Council they invariably notified their employers of the change. In some instances I have notified employers personally, and we have notified them through our office.

Q. What employers did you notify personally? Did you notify Mr. Mackay?

A. Well, I believe that Mr. Mackay was present at a conference or interview that we had at the Builders Exchange, I believe in the month of October, preceding our general assembly or following our general assem-

bly. I was there on other business and the question was asked by Mr. Rosenthal, "Do I understand, Mr. Kelley, that you changed the law relative to out of town work?" I said, "Yes, the law is now that you must pay the higher rate of wages," and I believe that Mr. Mackay was present at that time. And I think afterwards that Mr. Norman, who represents the Employers' Association, was also present, and he then repeated the question to me and I said yes.

Q. Mr. Kelley, is the firm of Robert E. Mackay, Jr., Incorporation, of New York, one of the national concerns described by you?

A. I would consider that that firm is a national concern.

Q. Mr. Kelley, Mr. Rosenthal stated on the witness stand that out of about fifty outside jobs which his firm, the Barker Painting Company, had undertaken after the passage of this rule, the rule was complied with in only one or two instances. Are you familiar with Mr. Rosenthal's work, or rather the work of the Barker Painting Company, after the passage of this rule?

A. Well, if there is fifty cases I don't know where they could be. I know the Barker Painting Company had quite some work prior to the enactment of that law that was not—that he did not pay the rate, but that was to my knowledge prior to it, and I can say one of those jobs was in Wilmington, Delaware, and another I believe was in Steubenville, Ohio; and I think that there was a job in Detroit; and all of those, I believe, were either before or they were contracted before the enactment of this law.

Q. Where a job was contracted before the enactment of your amendment did you permit the contractor to do that work upon the old basis?

A. If it was brought to my attention in the district I would advise the local union to allow the contractor to finish his work.

Q. On the old scale?

A. On the old scale, because they would say that that was taking an advantage and we would not care to have that because we have friendly relations with the employers throughout the country.

Q. Mr. Rosenthal mentioned the Statler Hotel in Buffalo as one of the jobs done by him on the basis of the Buffalo scale, recently. Do you know the situation with respect to that particular work?

A. Well, I just know something about it, and it is quite recent. At the same time that I had occasion to inform Mr. Rosenthal about the higher rate of wages he asked me if he got the hotel in the City of Buffalo would he have to pay the higher rate of wages. I said, "Yes, that is our law now, Mr. Rosenthal, and the higher rate of wages will prevail on that job." Now since the work has proceeded in that city, I understand that for reasons of our men in that locality being involved in a difficulty with their employers that they came to some understanding regarding wages on the Statler Hotel. I believe that our organizations there were inviting outside contractors on account of the strikes that they were having there to bid on this work, and I think that if any terms were made, it was made on that, but I believe that even that is higher than the Buffalo scale of wages.

CROSS-EXAMINATION.

By MR. LANE:

Q. Mr. Kelley, why would it be unfair to make the contractors pay the higher wage scale where the contract was taken before the new law went into effect?

A. Why?

Q. Yes; why?

A. Well, we considered that it would be unfair to take advantage of him when they were using that wage scale in those localities before. Understand, we did not want to have him tell us that we were taking any undue advantage of him.

Q. But why?

A. Why?

Q. You heard my question. Why was it taking an unfair advantage and why could he say it was taking an unfair advantage?

A. Well, employers would say that we were taking an unfair advantage of them.

Q. Why?

A. Because of the fact that we had not up to that time enforced the law relative to fifty—or relative to the higher rate of wages.

Q. What difference would that make so far as fairness is concerned?

A. Well, it would——

Q. Why?

A. I explained——

Q. I know it would, but why would it?

A. I explained the reason about it.

Q. Is that the only explanation you can give?

A. That is the explanation that I give.

Q. But the contractor figured on the higher rates when he got the contract?

A. Yes, sir.

Q. Then where is the unfairness?

A. Yes, sir.

Q. Where is the unfairness?

A. Well, I considered in adjusting this that in order to have the harmony, where there was a question regarding the wages, understand I would consider, while I was never asked, understand, but I said if I was asked that in order—(interrupted).

Q. The word fair is not my word, it is yours. You said it would be considered unfair to apply the higher wage scale where the contract was taken before, and I am asking you why it would be considered unfair if the contractor had figured upon the higher wage scale?

A. Well, I give you my explanation of it.

Q. Is that the only explanation you can give?

A. Yes, sir.

Q. How do you know that the contractor figured on that higher wage scale?

A. That is in common practice. The men—employers that contract work—it is only possible for them to contract at the higher price because they do not know in all instances what the local scale is.

Q. They do not know in all instances what the local scale is?

A. No.

Q. Why the local scale is promulgated in the printed list, isn't it?

A. No.

Q. There are no printed lists?

A. No.

Q. Employers' Association in New York hasn't a printed list of the wage scale throughout the country?

A. I can only say from the journeymen, and the journeymen are the ones generally that make the wage scale.

Q. The Employers' Association of New York have not a printed list showing the wage scale in every city there is in this country?

A. If the employers have one it is computed by themselves and not by the journeymen.

Q. Well, suppose it is computed by themselves or by the journeymen?

A. And it cannot be exact because we do not know from time to time what the wage scales are in the various localities of the country ourselves.

Q. Don't you know that the employers get that information for their own use?

A. They can get it for their own use from their own members, that is true, but invariably, in a number of localities, they do not employ our men.

Q. Well, I am talking about where your men are employed. Now they do get it, don't they?

A. They can get it in some instances.

Q. And don't they get it?

A. They can, I say, in some instances.

Q. Do you know whether they do or not?

A. Well, if you say they have gotten it, I guess it is true they have got it.

Q. Do you know? I am trying to get your information. You are here as an expert upon employers' contracting prices?

A. I don't know, because they wouldn't tell me if they were furnishing those lists.

Q. And they wouldn't tell you whether they were estimating on the higher wage scale or lower wage scale, would they?

A. Well, all the information I have doesn't——

Q. What is your information? The difficulty is I don't know what you testified to as being your information. What information have you?

A. I gave you the information that the general practice of these contractors, when they send out their work for estimates on, that these contractors generally estimate for the higher rate, for that is the reason we have contractors in this and other cities that do estimate on this same class of work and do pay the higher rate of wages, and in competition.

Q. I am asking you—you have told me now several times that that is the practice of the employer—and I am asking you how you know it to be their practice?

A. I know it from the information that I have from our men and from the employers.

Q. Well, from whom of the employers, now?

A. Well, we can take the employers—some that do pay the higher rate of wages.

Q. Now, I am talking——

A. In common practice?

Q. Why of course the common practice now, if your law is to be obeyed, must be that they will estimate upon higher wage scales. I am talking about the practice of the contractors before the changed law was put into effect.

A. Well, it was optionable with them then.

Q. And you don't know whether they figured upon the higher or lower wage scale?

A. I gave my evidence that they must have figured or they couldn't have paid five and ten cents an hour more. That was proof——

Q. Did they pay five and ten cents more on every job?

A. In most of the cases that I have knowledge of.

Q. How many jobs do you have knowledge of?

A. Well, I have had considerable. I even worked on some of these jobs myself where they paid the higher rate of wages before it was enacted into a law in our organization.

Q. Some of them did not pay the higher rate, did they?

A. Some few instances.

Q. When they did pay the higher rate they must have figured on the lower rate?

A. Well, I doubt that, too.

Q. Do you know anything about it?

A. I know from general practice that they all estimate—they have to have some basis to estimate on, understand, and they generally take the wages, that they are paying those men, their own men, in those localities.

Q. I understand that—what you say, I am asking you how you know?

A. I say from general knowledge in the business, dealing with these employers.

Q. You have given me now all the ways by which you know?

A. Yes, sir.

Q. There is nothing else that you can think of that would give you that information?

A. I am not thinking just now, I am testifying.

Q. You are thinking. Is there anything else you can think of now on the stand that would give you any information upon the subject as to how the employers figured?

A. Well, I told you that.

Q. Anything else?

A. No.

Q. There are two distinct classes of work in the painting business in general, one is decoration and the other is common painting, isn't there?

A. Yes, sir.

Q. Now decorators get higher rates than ordinary painters, don't they?

A. Not necessarily. Our scale is just the same. We have decorative work——

Q. You mean to say the man who paints the ordinary wall, such as we have on this wall, gets the same amount—the same wage as the man who does interior decoration for theatres?

A. Yes, sir.

Q. Of a decorative character?

A. Yes, sir.

Q. What theory is that on?

A. Well, that is on the same theory that I have advanced my argument, understand, to have the harmony prevailing on the job.

Q. Between the highly skilled artist and the unskilled painter?

A. Our organization says that the minimum scale will be so and so. If the employer cares to pay more that is optionable with him but there is nothing in our

law that says anything but the higher rate of wages—or the rate of wages that we ask for the plain painter and for the decorator also.

Q. I am not talking about your law. I am talking about the practice now?

A. The practice is the same.

Q. In other words, the highly skilled man who does the decorative work receives the same wage as the man who simply uses a brush?

A. Yes, sir; in the large cities, yes, sir.

Q. In the smaller cities?

A. Small cities, why they, perhaps might get a few cents more in a day. They would apply it to the most ordinary painting, extra compensation for taking charge, and what the employer would call efficiency.

Q. I am trying to draw a distinction now, between the ordinary painter who does flat work and the man who does decoration. That is the only distinction I am trying to draw.

A. We do not draw it any more in regard to making the wage scale.

Q. And there isn't any difference drawn in practice?

A. In practice, no more in large cities.

Q. Smaller cities I am talking about?

A. In the smaller cities it is optional with the employer. Where we have an agreement we have one wage scale for the painters.

Q. Does the employer in smaller cities usually pay higher rates for these artists?

A. If he has imported them in he does.

Q. That is a class of labor that has got to be imported, hasn't it?

A. Not necessarily.

Q. I didn't say necessarily. Isn't that the class of labor that they import?

A. It usually does. It usually comes with the contractor bringing them in—rare instances they might import a fellow in, but very rare.

Q. So it is usual to use local labor?

A. If it is a local contractor.

Q. I am talking about any contractor who is doing the work now. Suppose a national contractor does the work?

A. Yes, sir.

Q. For his ordinary work he uses local men, doesn't he?

A. He uses local and his own men coming in, both classes.

Q. Now he usually uses local men if there are local men enough in the locality, does he not?

A. Not necessarily.

Q. For plain work?

A. I may answer you just to show you—Mr. Rosenthal told me—and I don't know if Mr. Mackay was present, he says, "Kelley, if I could take the class of men that I got in my organization in New York I could make money with them on the higher rate of wages any place I sent them to in this country," to show you that he would take his own men, and he objected strenuously to us on account of the fifty per cent. law. He wanted to bring his men all over the country from his home city.

Q. I am not interested in what Mr. Rosenthal told you.

A. I am just telling you to point out my question—answer.

Q. (Question read.)

A. I said they would use them, yes, but he also brings his own men in.

Q. For plain work?

A. Yes, sir.

Q. In every instance?

A. Not in every instance.

Q. The most instances?

A. He sends some of his own men in almost all instances.

Q. They are charge men, aren't they?

A. Charge men.

Q. Foremen?

A. So called; but they bring them in for other reasons. I would call them for—sometimes they are second cads and third cads where there is a large job, and they generally are to assist in making a paste to show the local men how the work is done. How their organization does it. I mean, speaking of their "organization," the firm's organization of men. They are generally brought in, sometimes on account of their speed in their home city.

Q. Do you know of any reason why if the New York contractors or the national contractor employs all local men the local rate should not be paid?

A. Do I know any reason where a national contractor pays a local rate or——

Q. No. Do you know of any reason why a national contractor who employs all local men that the local rates should not be paid—why the local rates should not be paid?

A. For the reasons that I have given in saying why this amendment was enacted into our law. I testified to it.

Q. It cannot be for all of them because I have eliminated the friction. I am assuming that the national contractor employs all local men. What is the reason why he should pay the home rate?

A. Well, for the reason that has been advanced, as I testified to, because of the fact that he generally estimates to pay it and on account of the efficiency that he can get by these local men on the job by the advance in the price.

Q. Well, so far as the efficiency which he gets is concerned he may pay the higher rate. He will have accomplished that if he pays the higher rate at his option, will he not?

A. And you know that an employer coming from one city to another to do a temporary job of work would have considerable trouble getting men if he did not adopt the higher rate of wages because the men would not care to go to work there. Some of them, perhaps, if it occurred in the busy season, they would not care to leave their old employers, and secondly he could not get an efficient force without he made some inducement to them.

Q. I am very glad you are solicitous about the affairs of the employer.

A. We are, because it is mutual.

Q. I am not talking now from the standpoint of the employer at all. I want to know if there is any reason from the standpoint of the employee why, if the national contractor employs only local men, the rate of pay in the town from which the contractor happens to hail should be applied?

A. Well, I answered that.

Q. No, you haven't.

A. I said for the reason that in my opinion that his bid is on the higher rate of wages.

Q. That is the only reason?

A. Well, that and the efficiency that would occur on that job and the time of getting his work finished.

Q. Why do the large contracting firms send out to other cities and to the local city in which the work is being done to get estimates?

A. Sometimes they do not send to the city where the work is being done.

Q. You have stated in some instances they do?

A. In cases, yes, sir.

Q. Now, why?

A. Well, in the case where he would send it to the local—he would like to use that bid in my estimation to get an adjustment of the bid that was sent it by an employer——

Q. And does he use it?

A. Does he use it?

Q. Yes; in your opinion?

A. He—the general contractor—might use it as a cudgel.

Q. And if the national contractor desires—painting contractor desires to get the job from the general contractor what does he do in response to the cudgeling?

A. Well, that isn't the case if the fellow generally holds in his bid and he knows that he has got the organization. He is not going to take any chances in giving the bid to a local contractor, taking into account a man that never done any work for him before—whether he could accomplish it or not.

Q. Was the fifty-fifty rule adopted at the same time as the rule providing for the higher scale?

A. At the same time the fifty-fifty rule was discarded.

Q. Was discarded?

A. Yes, sir.

Q. What is the rule now?

A. The rule now is fifty-fifty. The constitution has been amended in a referendum for placing the fifty-fifty back.

Q. When was that?

A. Last July.

Q. 1922?

A. Yes, sir.

Q. So that as your constitution now stands it is absolutely impossible for a contractor coming from across the river in New York to perform a bid for work in Jersey City upon the Jersey City rate of wages?

A. Jersey City rate and New York rate are the same.

Q. Well, Newark, then?

A. Newark. If it is a New York contractor he would have to pay the New York rate of wages.

Q. And there is no way by which he can, either by bringing in his own men or employing all local help, by which he can escape that?

A. So far as using our men are concerned there is no way.

Q. You are pretty well organized in this city?

A. I think we are.

Q. Most a hundred per cent., aren't you?

A. No; I wouldn't say a hundred per cent.

Q. About ninety-seven per cent?

A. I would say we are about ninety-five per cent. organized in this city.

Q. That is, in Newark?

A. Yes, sir.

Q. And the same percentage in the Metropolitan district of the City of New York?

A. I would say that we were about ninety per cent.

Q. And in the State of New Jersey?

A. Ninety per cent.

Q. About ninety per cent?

A. I would say that, yes, sir.

Q. And the State of Pennsylvania?

A. Well, I would say we are about seventy per cent.

Q. And Connecticut?

A. Connecticut I would say that we were about eighty.

Q. And in New York outside of the Metropolitan district?

A. We would say that we were ninety per cent.

Q. Do you know the firm of Edward W. Minte of Washington?

A. Yes, sir.

Q. Is that firm a national firm?

A. So far I wouldn't consider it a national firm. They do considerable work outside of the City of Washington.

Q. What?

A. They go, as I said in my general testimony—I said that there were firms that does work in their immediate vicinity of their home city, and sometimes go out. I should say that Minte is considered quite a large employer in the City of Washington. He does work as I mentioned, and I had him in mind when I said he does work in Maryland and sometimes goes into Virginia and North Carolina.

Q. He is not a national contractor?

A. Well, I wouldn't place him in the fifty that I mentioned, but he is quite a large contractor.

Q. Do you know what the wage scale is in Miami?

A. I believe in Miami the wage scale is there at the present time $7 a day. We have a little difficulty with our employers in Miami.

Q. What is the Washington wage scale?

A. The present wage scale $8 a day. I would say we are having a little bit of difficulty there at the present time. We have an organization campaign.

Q. So that if Minte does work, although he is not one of the national contractors you refer to—if he does work in Miami he has got to pay the Washington wage scale, doesn't he?

A. Yes, sir.

Q. Do you know that he is doing work in Miami?

A. Just from your information just now.

Q. Well, do you base, or have you based your testimony with respect to your knowledge as to what the employers charge and estimate upon so uncertain a basis as you are willing to accept my statement or suggestion that Mr. Minte is doing some work in Miami?

MR. HILLQUIT: I object to the question particularly on the ground that counsel characterizes his own statement as an unreliable basis for testimony.

A. I have given my testimony from knowledge that I have from these things I have testified to.

Q. Apparently you were willing to base your knowledge upon an offhand statement made by me on cross-examination?

A. I told you then—I thought that it would qualify my testimony, that Mr. Minte has jobs in various localities in the South and in the immediate vicinity that I gave, and if he has got a job in Miami, why, he would have to pay the prevailing rate of wages for the City of Washington.

Q. Are there large firms in Philadelphia?

A. Oh, a few.

Q. What is the wage scale in Philadelphia?

A. Today, ninety cents an hour.

Q. What does that mean in a day's pay?

A. That means about—I guess $7.20.

Q. What is the wage scale in New York City?

A. New York, $9.

Q. Do New York contractors do work in Philadelphia?

A. Yes, sir.

Q. So that although there are contractors in Philadelphia, large ones——

A. Fairly large.

Q. ——who can do the work according to the local wage scale——

A. Yes, sir.

Q. ——a contractor from New York coming down to Philadelphia has got to pay the wage scale of New York?

A. Yes, sir.

Q. In direct competition with the local man?

A. Yes, sir.

Q. Although the local man—although there are firms in that city who are of national reputation?

A. Of course, we cannot say they all come in competition.

Q. I didn't ask you that, particularly.

A. We can't say whether they all come in competition. I will say—with a job like Stotesbury's house there I would say I don't believe any estimating on that job by any New York firm that he would come in competition with the Philadelphia firm, in my opinion.

Q. What is the wage scale in Boston?

A. Boston, $8 a day.

Q. Do New York contractors do work in Boston?

A. Yes, sir.

Q. And so that in Boston, although in competition with the local firms who are of national reputation also, they have got to pay the New York wage, too?

A. Yes, sir.

Q. Are there any firms of national reputation that you know in the City of Newark?

A. Not that I know of. There might be one or two firms that would go out and take a job in the smaller towns in New Jersey, and might go into Pennsylvania, and sometimes go into New York State.

Q. What wages do J. I. Hass & Company pay?

A. J. I. Hass pay $9 a day.

Q. By agrement or by——

A. By agreement.

Q. Separate agreement?

A. Separate agreement generally with New Jersey.

Q. The J. I. Hass Company doing work in the City of Newark, what would they pay?

A. They would pay $9 a day.

Q. Do you know of any jobs where they paid that?

A. I have one job in mind that Mr. J. I. Hass is doing at Atlantic City in New Jersey and is paying the

higher rate of wages. The Atlantic City rate is $8 a day and Mr. J. I. Hass is now paying on the High School at Atlantic City $9 a day and forty hours a week.

Q. Upon the theory that Jersey City is a part of the Metropolitan district?

A. No; on the theory that it is our law, and Mr. Hass employes all union men and lives up to the union agreement and the laws of the Brotherhood.

Q. How does your law affect him?

A. It affects him in this way, that when he leaves his home town the higher rate of wages goes with him. In other words, if he takes his men into Atlantic City, which is $8 a day, and the Jersey City rate is $9 a day, he pays the $9 a day.

Q. All in the same State?

A. All in the same State.

Q. You have agreements, have you not, between the employers and employees throughout the country?

A. Yes, sir; in most instances.

Q. Fixing the wage scale?

A. The local unions made the agreement with the employer fixing the wage scale.

Q. Those agreements are open to employers in other districts, aren't they?

A. Yes, sir.

Q. You say in some instances the employers are members of your association?

A. Yes, sir.

Q. Where?

A. Well, the City of Logansport, Indiana, I say that eighty per cent. of the employers in that city belongs to our local organization.

Q. How large a city is it?

A. I judge it has a population of about thirty to thirty-three thousand.

Q. Any other places?

A. Well, that goes in most—the smaller cities—we have quite a number of employers that belong to our organization, and I will state in Dubois, Pennsylvania, all the employers belong to our local organization, participate in its affairs. Any number of instances, too numerous to give them all, because we have twelve hundred and some odd local unions.

Q. And in most of the large centers there are employers' associations?

A. Yes, sir.

Q. On the one hand and your union on the other?

A. Yes, sir.

Q. In New York there is an employers' association?

A. Yes, sir.

Q. And how well are the employers organized, do you know?

A. Well, I don't know just how strong they are organized. Some time ago they did not have a very strong organization in the City of New York. Of course, perhaps now they are getting some more members in. I don't know just their relative strength at the present time.

Q. And your strength I suppose where you have agreements with the employers' association is added to that of the employers' association, isn't it?

A. Well, in what way?

Q. You are both working for a common purpose?

A. We have worked mutually—mutual interest of both of us, where we have agreements.

Q. Any employers' associations in the other large centers?

A. No—in a number of them, yes, in the large centers, yes, such as Chicago, Boston, New York and Philadelphia, Washington, they have employers' associations. Those cities we do not have any of our men—any employers in our organization.

Q. You have an agreement with the employers' association as such?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By MR. HILLQUIT:

Q. Mr. Kelley, what is approximately the percentage of all organized painters in the United States?

A. I would say approximately a little over fifty per cent.

Q. Mr. Lane has asked whether there was any way for a New York employer to get work done in Newark unless he pays the New York scale. Your answer was no. I will now ask you whether there is any way for any employer, dealing with your union, to get work done unless he pays the scale and accepts the other terms of union conditions?

A. In Newark, you mean?

Q. Anywhere; can any employer get the work of your members unless he pays the scale?

A. Nobody can unless he pays the prevailing scale of wages and abides by that law.

RE-CROSS-EXAMINATION.

Q. The rule that you have referred to as the law has, in your opinion, the force of law, hasn't it?

A. No; I only say so far as our membership is concerned, like all organized bodies, and we are chartered under the State of Indiana, that we are amenable to the laws of Indiana, that that is only something to govern our organization. We say it is an enaction that they make themselves and it is made by the membership either in convention or in referendum vote.

Q. Well, you say only so far as your members are concerned?

A. Yes, sir.

Q. Wait. You don't know what I am going to say. Has it the force of law for all practical purposes where your membership consists of ninety-three per cent. of all the employees engaged in the business—it has the force of law for all employers, hasn't it?

MR. HILLQUIT: I object.

Q. In your opinion?

MR. HILLQUIT: I object to that as calling for the witness's conclusion and being a discussion rather than an examination.

A. I say that that law or constitution only applies to the members.

Q. Yes?

A. Where it comes into the employer he generally has something to do with making the wage scales in the various localities.

Q. Never mind what has to do with making the wage scale. For practical purposes the wage scales ordained by the union and the law of the union, where the industry is ninety-three per cent. organized—I say for practical purposes that is the law for the employer and the employees, isn't it?

A. That is if he agrees to it.

Q. If he does not agree to it, he doesn't get his work done, does he?

A. I wouldn't say——

Q. You wouldn't?

A. I wouldn't say he couldn't.

Q. Will your men work with non-union men?

A. Our members will not.

Q. Will your members work with non-union workers?

A. Our members will not work in that case, where there is ninety-three per cent. of them organized.

Q. Would your members work with non-union men in cases where you are ninety-three per cent. organized?

A. I do not think so.

Q. You know they will not, don't you?

A. You are answering your own question. I say I do not think so. We have any number of cases where we have men violate our law even in the ninety-nine per cent. organized towns, and the men went to work.

Q. If they do they are violating your law?

A. They are violating the constitution and by-laws.

Q. If they work with non-union members?

A. Yes, sir.

Q. And your men will not work upon a painting job where there are other non-union men employed upon other parts of the work, will they?

A. I won't say that.

Q. Well, will your men work alongside of—on a painting job performed by non-union carpenters where you are ninety-three per cent. organized?

A. We might.

Q. Do you as a general rule?

A. Well, it all depends whether we are in affiliation with them.

Q. Are you in affiliation with the carpenters?

A. In some instances we are, not in all instances.

Q. In the Metropolitan district?

A. Not at the present time.

Q. Are you affiliated with any other of the building trades in the industry?

A. Not at the present time, not in New York.

Q. Not at the present time?

A. No.

Q. How long since?

A. The last three years.

Q. Are you still affiliated with the American Federation of Labor?

A. By all means, yes, sir.

Q. The painters, I suppose, have never gone out on sympathetic strikes?

A. I wouldn't say that. They perhaps assist the other trades in sympathy lots of times, I guess.

Q. In the Metropolitan district?

A. Some years ago, yes, sir.

Q. You say that you were organized and chartered under the laws of Indiana. Are you incorporated under them?

A. Yes, sir.

Q. When?

A. I will tell you if I can refer to our constitution.

Q. Go ahead.

A. December 7, 1894. What is on the constitution is right. Our office is at Lafayette, Indiana.

RE-DIRECT EXAMINATION.

Q. Mr. Kelley, are the members of your organization citizens of the United States?

A. I would say that the vast majority of them are.

Q. And are they all free men?

A. Absolutely.

Q. And claim the right to give their labor upon such terms as they consider just and proper?

A. Yes, sir.

Q. Mr. Kelley, Mr. Mackay stated on the witness stand here that his reason why he incorporated the New Jersey Painting Company was to avoid strikes. In your experience where disputes arise between employers and workers in your industry would the fact of such a corporation in any way tend to protect Mr. Mackay from strikes?

A. I do not think so. If our men had cause to lay down their tools they would lay down their tools on an incorporated body just as well as they would on any other, as there is lots of incorporated painting concerns that we work for and they are not relieved of strikes if the men——

RE-CROSS-EXAMINATION.

Q. I do not suppose that you mean that your membership claim the right in unionism to decline to work or to strike as they saw fit without regard to any other circumstances except their own will, or do you claim that?

A. I want to say that we have the right to decline work for whoever we saw fit, but as law-abiding citizens we obey the laws of every State in the union.

RE-DIRECT EXAMINATION.

Q. Is there any law that could compel you to work against your will?

MR. LANE: I object.

A. I have no knowledge of any law.

Thereupon plaintiff rested and defendants, further to support their case, offered the testimony of Philip Zausner, on pages 134, 135, 136 and 137 in the record of the New Jersey Painting Company versus the Local 26.

(The testimony referred to follows):

DEFENDANTS' EVIDENCE (Continued).

PHILIP ZAUSNER, on *direct examination* said: he lives at 60 East 102nd Street, City of New York, and is a painter by trade and is now occupied as secretary of the New York District Council of the Brotherhood of Painters, Decorators & Paperhangers of America; he was a delegate to the convention of the Brotherhood held in Dallas, Texas; one of the rules of the District Council requires the shop steward, that is, the union men in charge of the union interests on the jobs, to file weekly statements with the Council showing the number

of men employed and wages paid on the job; such reports are being made in writing, hand written and signed by each individual member on such jobs, received by mail at the office, tabulated in a regular weekly minute book, which is printed, and only one copy on exhibition for the membership and at the office of the District Council; this copy is in his possession as secretary of the District Council; he has gone over that book from April 1922 to January 1923, and has compiled all the wages received by their members working on outside jobs for New York City contractors; he has in addition to that also compiled a list of those not members of their jurisdiction working on outside jobs—local men—receiving the New York rate;

Over objection on the ground that the list was pure hearsay and immaterial and irrelevant, it was admitted in evidence as D-18.

On *cross-examination* the witness said: the list does not contain the names of the men who are working for the Barker Company at some hotel in Buffalo because it was not reported; there may be others where the men are not receiving the higher rates who have not been reported; if there are they are violators; the list is a list of those reported—of those who are obeying the law and those who are disobeying the law he assumes have not reported;

On *re-direct examination* he said: from his knowledge derived from his past dealing with employers he would state that the rule as to the higher scale is generally observed by contractors in New York and has been for many years back, as he remembers;

On *re-cross-examination,* he said: he knows the Barker Painting Company; he does not remember it built a hotel down in Wilmington or some work down in Wilmington just before the enactment of this rule in

which it did not pay the higher rate; he did not know until the Brotherhood representative, Mr. Kelley, testified to it that Barker Painting Company is now building or within a very few months—since the adoption of the rule—been building a hotel in Buffalo and not paying the New York rate; there may be others.

Q. And if the Barker Contracting Company paid in Wilmington—or painting company, paid in Wilmington, Delaware, the local Wilmington rates before the enactment of this rule your statement that the contractors all followed out this plan before the enactment of the rule is not quite correct, is it?

A. It is correct in so far as I have qualified, that all do excepting those who violate.

RE-DIRECT EXAMINATION.

Q. As far as you know there may be also contractors who pay below the scale?

A. As far as I know there may be some contractors who not alone pay under the scale but also violate working hours and every other provision of the union conditions.

Q. Did your District Council give notice to all contractors within your territory of the enactment of this amendment?

A. We did.

PLAINTIFF'S EXHIBITS.

Plaintiff's Exhibit P-1, offered during the examination of Rosenthal, is a contract dated November 8, 1924, between Barker Painting Company and John Lowry, Jr., Inc., under the terms of which Barker Painting Company agrees to perform all labor and material necessary to the completion of the painting for the Somerset Hospital, Somerville, New Jersey, in accordance with plans, specifications and addenda of Crow, Lewis & Wick, Architects, for the sum of $7800. The work is to be performed as required by the progress of the job, John Lowry, Jr., Inc., agreeing from time to time, upon request, to inform Barker Painting Company of such progress and the immediate requirements. The contract provides that Barker Painting Company will employ labor that will not involve John Lowry, Jr., Inc., in any dispute with any labor unions, and that no employee or employees unsatisfactory to John Lowry, Jr., Inc., will be employed in any branch of the work included in the contract.

Plaintiff's Exhibit P-2. Extracts from Constitution of International Brotherhood of Painters, Decorators and Paperhangers of America.

PREAMBLE.

In this age of progress and civilization the universal tendency is toward organization and combination. The capitalists, combined and consolidated, control the wealth of the world, and the rapid concentration of industry and power in their hands has an extremely injurious effect upon all branches of honorable toil. None have suffered to a greater degree than those engaged in the various branches of the painting industry.

Year by wear our craft has been reduced from its rightful position among the mechanical callings. Our wages are lower than in other trades requiring no greater skill or effort. In the absence of a strict apprenticeship system, and through lack of thorough organization, our trade literally swarms with unskilled men. Unfair and unscrupulous employers have introduced illegitimate practices that are a discredit and a reproach, while everywhere, in the competition for work, cheapness has become the prevalent rule to the detriment of employers and journeymen to the injury of the public and to the ruin and degradation of our trade. This condition of affairs demands our most earnest attention.

Shall we permit our craft to sink lower and lower, until we are beyond hope of redemption?

Are we not entitled to a just equivalent, a fair remuneration for our labor, sufficient to enable our families to live in modest comfort, to give our children a liberal education and permit us to make provision for sickness and old age?

It is evident that to protect ourselves we must combine. There is no hope for us except in unity and organization. We must form a union broad enough to embrace every competent worker at the various branches of our trade—one that will protect every man in his labor and his wages. Singlehanded we can do nothing, but united there is no power we may not openly defy.

Therefore, it is the imperative duty of every man who works for a living at our craft to do all in his power to secure thorough organization and unity of action. To accomplish the objects set forth in this Constitution we have formed the BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA.

ARTICLES OF ASSOCIATION.

Seventh—Constitution and By-Laws.

This Association shall have the power and reserves the right to make, establish and adopt such constitution, rules and by-laws as it may deem proper to alter, amend, add to or repeal the same at any biennial meeting of the local unions or by referendum vote. This Association shall have power in said constitution and by-laws to define the duties and powers of all its officers, and to regulate and prescribe the manner in which revenue shall be raised and local unions of this Association organized, officered and conducted, and to prescribe the amount of fees that shall be charged for admission to membership and as dues.

CONSTITUTION.

Name and Jurisdiction.

Section 1. This Association shall be known as the Brotherhood of Painters, Decorators and Paperhangers of America, and shall have jurisdiction over all house, sign, pictorial, coach, car, automobile, carriage, air craft, machinery, ship and railroad equipment painters; over all decorators, paperhangers, hard wood finishers, grainers, glaziers, varnishers, enamelers, gilders and scenic artists; over all men engaged in applying or removing paints, oils, varnishes, water colors, wall papers or other materials used in the various branches of the trade and over all glass workers, to wit: settlers of art glass, prism glass, leaded glass and protection glass, bevellers, cutters, glaziers, in lead or other metals, shade workers, silverers, scratch polishers, embossers, engravers, designers, painters on glass, chippers, mosaic workers, benders, cementers, flat glass or wheel cutters and other workers in glass used in the

construction of buildings or for architectural or decorative purposes, and shall be comprised of an unlimited number of local unions, district councils and other subordinate bodies, subject to its laws and usages.

Admission of Contractors.

Sec. 93. A contractor is one who takes work direct from the owner, architect, or builder, and employs one or more men.

Sec. 94. The admission of contractors to membership or the refusal thereof shall be determined by the by-laws of the local union or district council. Where contractors are admitted the local union shall determine the conditions of admission, but they must comply with the trade rules and working conditions of the locality in which the work is done; must pay the union scale, hire union men only and not belong to any employers' or contractors' associations. No contractor shall be eligible to hold office or vote on any question pertaining to hours or wages or at elections of Business Agent.

Privileges and Duties of Members.

Sec. 126. Any member who becomes a contractor or employer may (subject to the provisions of Sec. 94) remain a member in a local union which admits contractors to membership, but must resign, transfer to a local union that admits contractors to membership or take a withdrawal card from any local union whose by-laws prohibit admission of contractors. This law shall not interfere with the right of journeymen to take work temporarily during strikes, or lockouts, or when unemployed under such reasonable restrictions as the local union or district council may determine and to give employment to one or more men.

Sec. 127. When a member of the Brotherhood is employed by a general building contractor or owner, and the owner or contractor furnishes the material and the member hires union men by the day and pays union wages, it shall not be considered piece work. But if the work is taken from an employing painting contractor, it shall be considered piece work or sub-contracting and shall not be permitted.

Paperhangers working by the piece shall not be considered contractors.

Sec. 130. A member of the Brotherhood in good standing may work as a journeyman at any of the branches of the trade, provided he demands and receives the rate of wages paid and otherwise conforms to the working rules of that branch of the trade in which he wishes to be employed. He shall transfer his membership to the local union of the special branch of the trade in which he is engaged in a locality where such a union exists.

Sec. 132. Neither the General Executive Board nor any other authority shall have power to grant exclusive or special privileges to any local union or district council working under a charter of this Brotherhood; nor shall the G. E. B. or any other authority be invested with power to force any employer to bring men from one city to work in another city if union men can be procured in such city where the work is to be erected and finished. All conditions of such localities shall be strictly adhered to, the shorter work day and the higher scale of either locality to prevail in all cases. A card fully paid up, regardless of where it is issued, shall entitle the holder to the right to work in any city provided he conforms with the working rules and conditions of the locality and that no strike or lockout exists in that locality.

When a contractor, builder or boss painter does any work pertaining to our trade outside his home city or town—and in a locality where a District Council or a Local Union exists—not less than fifty (50) per cent. of the men in such district shall be employed on all work coming within the jurisdiction of the Brotherhood of Painters, Decorators and Paperhangers of America as defined in the General Constitution.

Sec. 133. A member leaving the jurisdiction of the local union in which he is a member to work for his employer on a job in the jurisdiction of another local union must comply with the working rules and laws of that locality and demand in all cases the shorter work day and the higher scale.

Organization of Local Unions.

Sec. 149. A local union may be organized by seven or more persons engaged in any of the branches of the trade enumerated in Section 1 of this constitution, provided they are qualified. They must apply to the G. S. T. for a charter and send $15.00 charter fee. The G. S. T. shall forward a charter, a set of three rituals, a roll book, a secretary's minute book, twenty constitutions, twenty membership books and all necessary cards and forms, including bond application forms, together with a metal seal and full set of financial books.

Local Autonomy.

Sec. 151. Each local union shall have trade autonomy over that branch of the craft in which its members are employed; also control over the scale of wages. But where a district council exists the scale of wages and trade rules must be submitted to and be approved by the council at or before the time when it is consider-

ing agreements between its affiliated unions and the employers. Any section of this constitution conflicting with this section shall be null and void when pertaining to and used to interfere with the trade autonomy of this section.

Local By-Laws.

Sec. 156. Each local union shall frame its own by-laws, which shall in no way conflict with the Constitution of the Brotherhood, or (where one exists) with the constitution and working rules of the district council. All by-laws and scales of wages shall be submitted (in duplicate) to the district council (if any) with which the local is affiliated and to the G. E. B. for their approval before being printed or enforced. One copy shall be returned approved or corrected, the other shall be filed at the General Office for reference.

Agreements.

Sec. 210. Local unions and district councils shall, wherever possible, make yearly agreements with the employers governing the hours of work, scale of wages and all other matters that are to the interest of the members, but no union or district council shall make any law or sign any agreement specifying that members of the Brotherhood shall work only for Master Painters who are members of a Master Painters', Decorators' or Wall Paper Dealers' Association or combination.

Sec. 212. All working agreements must be submitted to the General Executive Board for consideration and must be kept inviolate.

The G. E. B. shall not approve of a graded wage scale; it is demoralizing to the trade, an incentive to reckless competition and, when work is scarce, causes

first-class men to offer their labor at second-class prices. Employers may grade the wages above the minimum and thus reward exceptional skill.

Clearance Card Laws.

Sec. 238. A member in good standing wishing to leave the jurisdiction of his local union must apply to the Financial Secretary for a Clearance Card; he must pay up all arrearages and 10 cents for the card; it shall not require a vote of the local union for its issue. Should a member less than one year in membership apply for a Clearance Card, it shall be granted with the provision that if he deposit it in a local union where a higher initiation fee prevails he shall pay the difference between such fees to the local union accepting his card.

Sec. 243. A member carrying a Clearance Card shall deposit it in some local union before the expiration of thirty days from date of issue. The right to so deposit this card terminates thirty days from the date of issue except as provided in Section 246. Provided, however, that a Local Union accepting a Clearance Card shall at once notify the Union from which card is issued.

Sec. 245. A member of the Brotherhood who visits a city or town in search of employment shall deposit his Clearance Card with some official of the union within forty-eight hours after his arrival.

Sec. 246. If more than forty-eight hours in the jurisdiction of the local union or district council before presenting his card he may be fined, not to exceed $10.00. If the member can show that failure to deposit card within the prescribed time is caused by circumstances beyond his control or can give satisfactory reasons for the delay the local union may accept the card upon payment of all arrearages and may omit the

imposition of any penalty; but this shall not apply to those more than six months in arrears.

Sec. 248. A member making application for Clearance Card shall be required to state whether he is leaving the jurisdiction of his local union or district council to continue in the employ of his home firm in some other jurisdiction. A member obtaining and using Clearance Card in violation of this law shall, upon proof of such violation, pay to the Local Union issuing the card a fine not exceeding $25.00.

Strike and Lockout Laws.

Sec. 256. Local unions, district councils and the G. E. B. shall do all in their power to discourage strikes and lockouts, and adopt such means as will tend to bring about an amicable understanding between members and their employers.

Misconduct and Penalties.

Sec. 271. Any member who acts in violation of his obligation or who violates any article or section of the constitution of the Brotherhood or of the by-laws of a local union, shall be fined or expelled at the discretion of the local union.

Local unions of special branches shall have the power to enforce and collect fines for all violations of the special trade rules of that particular branch of the trade.

Sec. 274. Any member going to work on a job declared non-union shall, after trial and conviction, be fined as the district council or local union may decide.

Sec. 275. No member of this Brotherhood shall injure the interests of another by undermining him in prices or wages, or wilfully performing any other act by which the situation of any member may be placed

in jeopardy; nor shall he be allowed to work within the jurisdiction of any local union with anyone who does not carry a membership card.

Charges and Trials.

Sec. 282. Any member having knowledge of the violation of any section of the constitution or by-laws shall prefer charges against the offending member.

Plaintiff's Exhibit P-3. Trade and working rules of District Council No. 10—Brotherhood of Painters.

RULES.

All members should study these rules, and also, the General Constitution of the Brotherhood. Members working in the jurisdictions of other District Councils or Local Unions will be subject to their rules and should get information thereon without delay. In a number of localities the 5 day or 40 hour week is observed. Members working for their home shop in an outside locality are permitted to do so for a period not exceeding 60 days, without taking a Clearance Card. In such cases, the shorter work week, and the higher rate of wages, should either or both prevail, must be lived up to. Any information desired will, if available be furnished by any Business Agent or Union officer, and no plea of ignorance of the law will exempt any one from prosecution or penalty for violations.

Candidates for membership, and Apprentices are also subject to these rules. Apprentices are not permitted to work alone on any job with tools or brushes. Candidates will not be recognized on jobs by members unless they have the official permit from the Business Agent.

Sec. 1. This District Council shall consider all charges and trials of members for violation of the rules, both local and general, and shall affix and enforce all penalites. It shall settle all grievances or disputes in connection with the trade between members, or between members and employers.

Sec. 2. Members knowing of violations of these rules, and willfully failing to report same to the Business Agent or to the District Council, shall be liable to prosecution and fine.

Sec. 3. Any member who refuses to obey the Business Agent, or any order of this District Council, shall be subject to a fine at the discretion of the Council.

Sec. 4. Members must attend at least one meeting of their Local Union in the month, and have due book properly punched. Unless a reasonable excuse is given for failure to comply with this rule, a fine of 25¢ will be charged by the Local Financial Secretary for each month not punched.

Sec. 5. Dues must be paid before the expiration of each month. A fine of 25¢ will be charged by the Local Financial Secretary for each month's dues in arrears.

Sec. 6. The minimum dues of members shall be $1.25 per month. The minimum dues for non-beneficial members shall be 25¢ per month, and the same rate shall apply to Apprentices, excepting that Apprentices' dues shall be payable at the District Council.

Sec. 7. Quarterly Work cards shall be issued by this District Council, and these, as well as due book must be carried by members in the shop or on jobs, and are to be shown any Business Agent or other good standing member on demand. No member shall be allowed to hold a card in any dual organization.

Sec. 8. Eight hours shall be considered a regular day's work, from 8 till 12 A. M. and from 1 to 5 P. M. or from 12.30 to 4.30 P. M. No work shall be permitted

between 7 and 8 A. M. or from 5 to 6 P. M. Or between 4.30 and 6 P. M. Or between 4.30 and 6 P. M. where one-half hour is taken for dinner. Work between all other hours shall be considered as overtime, and double pay must be received therefor. Work on Sundays or legal holidays must also be paid at the rate of double time. Legal holidays observed are Jan. 1, Feb. 22, May 30, July 4, Thanksgiving Day, and Dec. 25, or those days on which the respective holidays are celebrated. No work shall be allowed under any circumstances on Labor Day, or on Saturday afternoons between 12 and 6 o'clock. Penalties for violations are at the discretion of the Council. Sunday work shall be allowed only on permit from the Business Agent, and offenders shall be fined $15 for the first offense, and double that sum for each succeeding violation. See Sec. 22.

Sec. 9. The minimum wages or rate of pay for journeymen shall be $1 per hour or $8 per day. Paperhangers working piece work shall be paid according to the established price list.

Sec. 10. Members shall not report to the shop before 7.30 A. M., or to the job before 7.45 A. M., or begin work before 8 A. M.

Sec. 11. For all work out of town, traveling time, fares and board shall be paid, traveling time to be considered as single time. All fares beyond the initial car, bus, or transfer limits shall also be paid by employers.

Sec. 12. Members shall be allowed time during working hours on pay day, when wages are not paid on the job, to travel to shop or office to receive same. Wages should be paid weekly. Members accepting checks for wages do so at their risk, and thereby forfeit any right to request the Council to act as collector.

Sec. 13. Members laid off (discharged) before end

of week or pay day, shall receive accumulated pay immediately from employer, or else waiting time shall be demanded.

Sec. 14. Members shall not travel between job and shop, or between jobs during lunch hour with or without tools.

Sec. 15. Members shall not work with suspended members, or non-union men, or with Apprentices not regularly registered or recognized as belonging in respective shops.

Sec. 16. Members shall not work in shops or on jobs that have been declared unfair by this Council, or where a strike has been ordered by this Council or its representatives.

Sec. 17. Foremen, chargemen, or shop or job stewards, or those recognized as such, or the first man on any job, in the order named, shall be responsible for reporting to the Business Agent or Council any non-union men, or members not having workcard or due book on such jobs within 24 hours.

Sec. 18. None but members in good standing in this Brotherhood shall be allowed to remove old paper or calcimine from ceilings or walls, or to wash or prepare such.

Sec. 19. In times other than when strikes or lockouts exist, members who desire to take work temporarily must report such to the Business Agents or Council, and permits to do such work must be procured. No such work shall be permitted in partnership with other members unless sanctioned by the Council. Sub-contracting from, or working in partnership with employers of non-union men, or lumping, or working in partnership with other members is forbidden. Violation of any part of this section is punishable by a fine of $25 or expulsion from the B. Any member who takes work for himself without reporting this to the Council

shall either be obliged to pay the stated fine, or resign from his Local Union.

Sec. 20. Intoxicated members or those using profane or indecent language in the meetings of the District Council or Local Unions, or those who repeatedly disturb the harmony of such meetings shall be ejected therefrom, or otherwise denied the privileges of such meetings.

Sec. 21. No member or officer of the District Council or its affiliated Local Unions shall publish or circulate, prematurely, any official action taken by either body, unless authorized to do so.

Sec. 22. Permits for Sunday work shall be issued for no other jobs than in stores, offices, factories, or such other places when work during week days would be impossible, insofar as interfering with the business of the occupants of such places.

Plaintiff's Exhibit P-4. (Letterhead of Brotherhood of Painters, Decorators and Paperhangers of America.)

New York, December 5, 1921.

To All Contractors employing Members of Affiliated Local Unions of the Brotherhood of Painters, Decorators and Paperhangers of America.

Greeting:

I have been instructed by the New York District Council No. 9 to notify all our fair employers of the following amendments to our General Constitution passed at the last Convention held at Dallas, Texas.

1. An amendment abolishing the fifty per cent. clause. This gives the employer the right to employ all his men in his home town to work on a job removed from the said home town, or the further right to employ the full quota of men required to carry on the work,

from the membership of the local or locals in the city, town, &c., where the job is located.

2. An amendment providing for the higher scale of wages to be paid to ALL men employed: In the event that an employer contracts work in a locality where the wage scale is higher than that prevailing in the jurisdiction of his home city or town, the higher wage scale must be paid to all men engaged by him, irrespective of whether they are employed in the locality where the work is being done, or in his home city, town, &c.

The above-described amendments are in full force and effect. You are therefore kindly asked to be guided accordingly.

Yours very truly,

(Signed) THOS. MCMURRAY,
Secretary.

DEFENDANTS' EXHIBITS.

Exhibit D-1.

Sec. 62. Neither the General Executive Board nor any other authority shall have power to grant exclusive or special privileges to any local union or district council working under a charter of this Brotherhood; nor shall the G. E. B. or any other authority be invested with power to force any employer to bring men from one city to work in another city if union men can be procured in such city where the work is to be erected and finished. All conditions of such localities shall be strictly adhered to, the shorter work day and the higher scale to prevail in all cases. A card fully paid up, regardless of where it is issued, shall entitle the holder to the right to work in any city provided he conforms with the working rules and condi-

tions of the locality and that no strike or lockout exists in that locality.

When a contractor, builder or boss painter does any work pertaining to our trade outside his home city or town—and in a locality where a District Council or a Local Union exists—not less than fifty (50) percent. of the men in such district shall be employed on all work coming within the jurisdiction of the Brotherhood of Painters, Decorators and Paperhangers of Amerika as defined in the General Constitution.

Exhibit D-2.

From April, 1922, to Jan., 1923.

OUT-OF-TOWN JOBS.

Employer	Job	Wages	No. Men
Hoggson Bros.	City Nat. Bank, Evanston, Ill.	$9.00	5
W. & J. Sloane	1600 Melrose Pl., Knoxville, Tenn.	9.00	3
J. S. Kelly	St. John's Hospital, L. I. City, N. Y.	9.00	4
Hoggson Bros.	City Nat. Bank, Evanston, Ill.	9.00	4
W. & J. Sloane	O. Edwards' House, 5607 Fifth Ave., Pittsburgh, Pa.	9.00	3
	1—local 6		
Mack, Jenny & Tyler	J. Widener, Elkins Park, Pa.	9.00	9
C. S. McKune	Scarsdale, N. Y.	9.00	19
	10 local men		
C. T. Wills	Chappaqua, N. Y.	9.00	2
F. R. Humrich	San Simeon, Cal.	9.00	7
N. J. Mathieu	H. H. Teagler, Millbrook, N. Y.	9.00	3
Wm. Delve	Ridgefield, Conn.	9.00	6
C. & H. Schmidt	Syosset, L. I. Webb Estate	9.00	6
W. & J. Sloane	Dr. Greenway's Res., Greenwich, Conn.	9.00	5
W. & J. Sloane	Briarcliff Manor, N. Y.	9.00	5

Employer	Job	Wages	No. Men
F. Rose & Co.	Sewickley, Pa.	9.00	3
P. W. French Co.	G. D. Pratt, Glen Cove, L. I.	9.00	4
Wm. Delve	H. James Res., New Canaan, Conn.	9.00	2
Chas. Rinschede	Gutman's House, Silver Mine, Conn.	9.00	2
J. E. Hellberg	Nassau County Tuberculosis Hospital, Farmingdale, L. I.	9.00	5
Hoggson Bros.	Easton, Pa.	9.00	7
W. & J. Sloane	Tamaqua, Pa. Greehan's Res.	9.00	6
Gunn & Borgo	Lansc. Hill Rd., Fairfield, Conn.	9.00	2
Trischka Dec. Co.	Dr. Ayers, Glen Cove, L. I.	9.00	2
Alavoine	Mackay, Roslyn, L. I.	9.00	3
W. & J. Sloane	Mrs. Alpred, Glen Cove, L. I.	9.00	4
Story & Flickinger	Tarrytown, N. Y.	9.00	7
	4 local 531 men		
Chas. Rinschede	Mrs. Cravens' House, 5 Park Terrace, Larchmont, N. Y.	9.00	8
Hoggson Bros.	Easton Trust Co., Easton, Pa.	9.00	8
P. W. French Co.	Bolton Landing, N. Y.	9.00	6
E. Dumble	Hofstrass' House, Hempstead, L. I.	9.00	4
A. Reinhardt	Bloomfield, N. J.	9.00	5
Hoggson Bros.	Rockford, Ill.	9.00	3
Wm. Baumgarten Co.	Lang Dry Dock Co., 14th St. Hoboken, N. J.	9.00	25
Wm. Kallies	E. S. Harkness, New London, Conn.	9.00	2
J. B. Wilson	Washington, D. C.	9.00	4
Chas. Rinschede	Batterman's Res., Mill Neck, L. I.	9.00	4
Mack, Jenny & Tyler	M. Guggenheimer's Res., West End, N. J.	9.00	15
	6 local men—L. 400		
H. F. Huber & Co.	Miss Torombly, Madison, N. J.	9.00	7
Hoggson Bros.	South Bend, Ind.	9.00	5
Mack, Jenny & Tyler	St. Paul's Church, Philadelphia, Pa.	9.00	5

Employer	Job	Wages	No. Men
	2 local men—703		
Hoggson Bros.	Bradford, Pa.	9.00	5
	1 local—L. 110		
W. & J. Sloane	N. C. Heath, Columbia, S. C.	9.00	4
Hoggson Bros.	South Bend, Ind.	9.00	8
	2 local men—L. 1118		
W. & J. Sloane	S. T. Smithers, Glen Cove, L. I.	9.00	3
	1 local 822		
Righter & Kolb	45 Palisade Ave., Englewood, N. J.	9.00	3
Wm. Delve	Flushing, L. I.	9.00	8
Hoggson Bros.	Bradford, Pa. (or Tenn.)	9.00	10
	6 local union 110		
Hoggson Bros.	South Bend, Ind.	9.00	7
	2 local union 1118		
C. Rinschede	Huntington, L. I.	9.00	6
Trischka Dec. Co.	T. B. Felder, Greenwich, Conn.	9.00	6
Wm. Baumgarten	85 Glenwood Ave., Jersey City, N. J.	9.00	8
E. Dumble	25 Larchmont Ave., Larchmont, N. Y.	9.00	5
Tiffany Studios	White Plains, N. Y.	9.00	9
Wm. Delve	Levering, Greenwich, Conn.	9.00	2
E. Dumble Co.	Jewett's House, Tuxedo Park, N. Y.	9.00	6
	1 local union 818		
J. P. Wilson	Shedhar's, Milton Pt., Rye, N. Y.	9.00	2

It is submitted that the foregoing summary and copies of exhibits be used in place of the full exhibits.

(Sgd.) MERRITT LANE,
Attorney for Plaintiff.

(Sgd.) HENRY CARLESS,
Attorney for Defendants.

ORDER APPROVING STATEMENT OF EVIDENCE.

And Be It Further Remembered, that the foregoing comprises the substance of all of the testimony in the case necessary to explain the issues and questions involved and the relation of the parties thereto, said testimony being set forth in narrative form, except such portions as are set forth in the exact words of the witness at the request of the parties and at the direction of the Court, and due notice having been given by the Barker Painting Company at the time and place when and where it would ask the Court to approve the statement, and both parties being in Court by counsel, and no objection being signified to the foregoing statement of evidence, the Court does now on this eleventh day of March, 1929, direct, at the request of the parties, that that portion of the testimony hereinbefore set forth as in the exact words of the witness, to be so reproduced as a part of the record on appeal, and does also approve the foregoing statement as true, complete and properly prepared. and that it be made a part of the record, and it is so made a part of the record accordingly.

(Sgd.) Wm. N. Runyon,
District Court Judge.

Above statement of evidence consented to.

(Sgd.) Merritt Lane,
Attorney for Plaintiff,
(Sgd.) Henry Carless,
Attorney for Defendant.

PRÆCIPE FOR RECORD.

Plaintiff designates to constitute the record upon its appeal, heretofore stated in the above entitled cause, the following:

1. Original bill of complaint.
2. Answer of the defendants.
3. The replication.
4. The opinion of the Court.
5. Final decree and exception thereto.
6. Petition and notice of appeal.
7. Order allowing appeal.
8. A statement of the undertaking on appeal.
9. A statement of the bond on appeal.
10. A statement of the orders extending term.
11. Assignment of errors.
12. This præcipe.
13. The statement of the evidence approved and signed.

(Sgd.) MERRITT LANE,
Attorney for Plaintiff.

Minute entry of argument and submission June 6, 1929, omitted in printing.

In United States Circuit Court of Appeals for the Third Circuit, March Term, 1929

No. 3912

Barker Painting Company, Plaintiff-Appellant,

v.

Local No. 734, Brotherhood of Painters, Decorators and Paperhangers of America; Brotherhood of Painters, Decorators and Paperhangers of America; George W. Hoffman, and Harry S. Warren, Defendants-Appellees

On Appeal from the District Court of the United States for the District of New Jersey

Before Woolley and Davis, Circuit Judges, and Rellstab, District Judge

Opinion—Filed August 12, 1929

Woolley, Circuit Judge:

The plaintiff appealed from a final decree of the District Court for the District of New Jersey, entered before yet in harmony with the decision of this court in Barker Painting Company v. Brotherhood, 15 Fed. (2d) 16, dismissing its bill which challenged the validity of rules prescribed by Sections 132 and 133 of the Brotherhood's Constitution. (See rules in case cited.) The same plaintiff made a like attack by its bill filed in the District Court for the Eastern District of Pennsylvania in the case just mentioned wherein the same questions were raised and decided by this court though on appeal from an interlocutory decree denying a preliminary injunction. Of course we should not be disposed, through the medium of this case, to re-try the other case and in effect reverse its decision if the two cases are based on substantially the same facts and this one, therefore, raises no new question of law or no

new aspect of an old question. Realizing this, counsel for the plaintiff selected expressions from our opinion in the Pennsylvania case in which he found an implication that we had rather summarily and without full consideration disposed of that case because on appeal from a decree merely refusing a preliminary injunction and, pointing to the difference between the two decrees,—there interlocutory, here final,—represented that the evidence, which in that case we said (as a caution against commitment on another state of facts) was not sufficient to invoke the extraordinary remedy of injunction, is supplied in this case by evidence which does justify such a remedy, and, thus setting up a new case, asked for a reconsideration of the law and reversal of our previous position.

We heard the argument at length. On our study of the record we of course found the facts in this case different from those in the Pennsylvania case as to place of work, personnel, dates, etc., but similar in character and action, and found no new facts which differentiate this case from the other or raise any new question of law. The same questions run through both cases, as indeed they do in all the reported cases on the subject, whether decided on interlocutory or final decree. New Jersey Painting Co. v. Local No. 26, 95 N. J. E. 108; 122 Atl. 622; reversed, 96 N. J. E. 632; 126 Atl. 399; Hass, Inc. v. Local Union No. 17, 300 Fed. 894; Marshall v. Brotherhood, Common Pleas, Philadelphia, not reported; Douglas & Bros. Inc. v. Mallette, Superior Court, Rhode Island, not reported; Barker Painting Co. v. Brotherhood, 15 Fed. (2d) 16, certiorari denied, 273 U. S. 747; Barker Painting Co. v. Brotherhood, 23 Fed. (2d) 743, certiorari denied, 276 U. S. 631. While we should be more than satisfied to have this controversy between employer and organized labor finally decided by the higher court, we are constrained, until then, to stand by the decision which we made not casually but after serious study and, we confess, much mental disturbance.

Aside from this position, we decline to take up the case on the merits because of another situation which counsel for the plaintiff was passing in silence when his attention was called to it from the bench and around which counsel for the defendants trod lightly. It is this.

The Barker Painting Company, a corporation of New York with its "home office" in New York City, had a contract for painting at Somerville, New Jersey The job was about thirty per cent completed when the defendant union called off its men by force of the offending rules which require a contractor to pay the wage rate of his home district or that of the locality of the work, whichever is higher. The Barker Company filed the bill in equity in this case stating the facts and alleging unlawfulness of the rules because violative of sundry provisions of the federal conconstitution and federal laws. The trial judge issued a preliminary injunction, mandatory in character in that it restrained the workmen from observing the union rules and from not returning to work. All the men save one obeyed the injunction, returned to work and completed the job. Whether the job was completed before the end of the final hearing on June 29, 1925, about four months after the isssuance of the preliminary injunction, is not disclosed by the record, but, on the plaintiff's concession, it was completed before the trial court handed down its opinion on April 14, 1926 and entered the final decree on March 23, 1928 dissolving the preliminary injunction and dismissing the bill.

Thus it is clear the questions which the plaintiff has raised are moot because, having been saved from injury throughout the work by the preliminary injunction, it has sustained no damage by the defendants' abortive enforcement of its rules. While as a matter of fact, or, perhaps, a matter to be inferred from the averments of the bill or from their past practices, the defendants propose to continue to enforce their rules, it does not follow necessarily that they will enforce them against the plaintiff or that the plaintiff will continue in business, or that, continuing in business, it will suffer by the rules' enforcement. It is just here that two odd things occurred, one that, though it suffered no damage through the operation of the Brotherhood rules, the plaintiff wants us to review this case and reverse our decision in the former case for its protection in the future, and the Brotherhood, not satisfied with one pronouncement by this court sustaining its rules, remained silent (until aroused by the court) as to the moot aspect

of the case, with the evident desire that its rules be further strengthened by another decision to the same effect.

Declining to yield to the desire of either party, we affirm the decree of the District Court, not on the merits but for the reasons stated.

A true copy. Teste: —— ——, Clerk of the United States Circuit Court of Appeals for the Third Circuit

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In United States Circuit Court of Appeals for the Third Circuit, March Term, 1929

No. 3912 (List No. 74)

Barker Painting Co., Appellant,

vs.

Local Brotherhood of Painters, etc., Appellees

Appeal from the District Court of the United States for the District of New Jersey

Decree—Filed Aug. 12, 1929

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed, with costs.

Philadelphia, August 12, 1929.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 9, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,608. U. S. Circuit Court of Appeals, Third Circuit. Term No. 477. Barker Painting Company, petitioner, vs. Local No. 734, Brotherhood of Painters, Decorators and Paperhangers of America, et al. Petition for writ of certiorari and exhibit thereto. Filed November 6, 1929. File No. 34,608.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF NEW JERSEY, } *ss.:*

I, George T. Cranmer, Clerk of the District Court of the United States, for the District of New Jersey, do hereby certify that the foregoing is a full, true and complete transcript of the record in the case of Barker Painting Co., Plaintiff, vs. Local No. 734 Brotherhood of Painters, Decorators and Paperhangers of America, et als., according to the direction of counsel herein filed, as the same remains of record and on file in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at Trenton, in said district, this nineteenth day of March, 1929.

(Sgd.) GEORGE T. CRANMER,
(Seal) *Clerk.*
By (Sgd.) CHARLES S. CHEVRIER,
Deputy Clerk.